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HISTORY

VOL. III: 1865-1913

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# SPEECHES AND DOCUMENTS IN AMERICAN HISTORY

*Selected and Edited by*

**ROBERT BIRLEY**



VOL. III: 1865-1913

**OXFORD UNIVERSITY PRESS**  
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*Vol. I 1776–1812*

*Vol. II 1814–1864*

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[The Constitution of the United States will be found in Volume I and the Amendments in their chronological sequence. Those clauses of the Constitution and Amendments referred to in this volume will be found in an Appendix on pages 313-15.]

## INTRODUCTION (VOL. III)

The assassination of Abraham Lincoln was the greatest tragedy in American history. No one can say, of course, whether he would have been able to deal successfully with the problems which overwhelmed his successor. But it can be said that, before he died, Lincoln had already fully appreciated the problem of Reconstruction after the Civil War, and that during the last months of his life he showed himself to possess to a degree perhaps unparalleled in history the temper of the true peacemaker, firm, patient, kindly, and practical. As it was, America was destined to pass through ten years of strife and failure. And this failure may be seen not only in the fact that Reconstruction left the South embittered and resentful, united in a negative defiance, but also in the inability of Congress to find a solution for the problem of the status of the emancipated negroes. Only a bold agrarian policy, settling the freedmen on the soil, could have been successful, and concentration on purely political struggles made them neglect the essential issues.

But this tale of failure must not blind us to the two great achievements of the Civil War. The problem of American unity was finally solved. This does not mean, of course, that the United States ceased to be a Federation. The question of the relations between the Federal Government and the States remains to-day a most important underlying issue in American politics. But after 1865 the question could be discussed and contested without the threat of a second Civil War.

social order  
with his clerks  
Slavery, he  
solved the

and Labour, by possessing a working-class of slaves, and he held that the South would, therefore, always form the conservative element in the Union. Abraham Lincoln realized instinctively that the problem of Slavery was a problem which affected all the States, that the growth of a free America depended eventually on the abolition of the institution, and that the claim of the South that it only wished to be left alone was inevitably a false one. It has been left to Herr Hitler (and it is not perhaps surprising) to appreciate more clearly than any other modern writer what was really settled by the Civil War. 'The beginnings of a great new social order,' he has said, 'based on the principle of slavery and inequality were destroyed by the Civil War, and with them also the embryo of a future truly great America that would not have been ruled by a corrupt caste of tradesmen, but by a real *Herren* class that would have swept away all the falsities of liberty and equality.'

This is not to say that all the dreams of Abraham Lincoln came true. America after the Civil War was plunged from one great social struggle into another. The most profound comment on American society, and one of the most profound on nineteenth-century civilization, is to be found in the second part of de Tocqueville's *Democracy in America* when he speaks of the aristocracy to which a manufacturing society may give birth. There he pointed out the fundamental difference between the old territorial aristocracy, which was passing away in Europe and had hardly any place in America, and the new manufacturing aristocracy which was linked by no permanent bonds to its working supporters, but first impoverished and debased those who served it and then abandoned them to be supported by the charity of the public. 'Between the workmen and the master there are frequent relations, but no real partnership.' The varied attempts to solve the problems created by the rise of this new aristocracy form the most important aspect of American history of the last seventy-five years.

At first sight American political history after the period of Reconstruction appears a barren story. It is certainly true that it was not to the debates in Congress or the speeches in the Presidential Elections that one must turn if one wishes to study the great movements of the time. The exploration of the tremendous resources of the soil, the experimental forging of a new technique in commerce and industry, the turmoil caused by the whirlpools of the Trade Cycle, the violent struggle between capitalists and workers, these seem but palely reflected in the muddy waters of political intrigue at Washington. But there were times when these waters were stirred by the confused struggle without, when, for instance, Congress debated the Silver question, or turned to the legislative regulation of Interstate Commerce or the Trusts, or when the Supreme Court passed judgment on questions affecting the great business corporations or the rights of labour. In 1896 the Presidential Election was indeed fought on a living issue, when W. J. Bryan led to glorious defeat the struggling farmers of the Middle West and the working men of many great cities where prosperity seemed a privilege of the few. Theodore Roosevelt awoke to the divorce between the Law and the real life of the people when he heard the Judges of the Court of Appeals of New York declare smugly that 'it cannot be perceived how the cigar maker is to be improved in his health or his morals by forcing him from his home and its hallowed associations and beneficent influences, to ply his trade elsewhere,' and then proceed to invalidate the reform of tenement houses in the greatest city of America. Roosevelt, in the dilemma which confronted him, that Big Business was tyrannical, cruel and unjust, and yet was the foundation on which American greatness and prosperity were being built, reflected that confusion in the minds of the majority of the nation which has made it sway from the New Freedom of Wilson to the Normalcy of Harding, and from the Rugged Individualism of Hoover to the New Deal of Franklin Roosevelt. 'Th' trusts,'

Mr Dooly made Roosevelt say, 'are hecious monstheres built up be th' enlightened intherprise iv th' men that have done so much to advance progress in our beloved country. On wan hand I wud stamp thim undher fut; on th' other hand not so fast.' In this he was the voice of America.

America, since the Civil War, has passed through a great economic revolution, with much of the violence that attends Revolutions. And yet there is nothing in modern American history more startling than the contrast between the violence of much in American life, Ku Klux Klan and military rule in the South; the wild existence of the newly settled frontier; the outbursts of armed warfare between factory-owners and workers; the fraudulence of the administration in the big cities; and the internecine struggles between the great capitalists; and, on the other side, a meticulous respect for the supremacy of Law and the letter of parliamentary procedure. The impeachment of President Johnson, which was the culminating point in the contest between the Congressional and Presidential plans for Reconstruction, failed in the Senate by a single vote. There was no attempt to reverse it by force. The first real chance for the Democratic Party to recover its position in politics, the Presidential Election of 1876, was defeated by one electoral vote in an Election marked by every variety of fraud. The party waited patiently for eight years before it won the Presidential office. President Franklin Roosevelt, wielding a greater power than any president in American history, could do nothing but accept the decisions of the Supreme Court when it invalidated much of the early work of his New Deal.

It is this acceptance, as a part of the American heritage, of the Rule of Law which explains the position during this period of the Supreme Court. Its increased importance was due to a fundamental change in the nature of legislation. The growth of an industrial civilization, highly complicated and constantly changing, multiplied the ways in which Congress

might affect the lives of the people. But in America all legislation is bounded by the limits set by the Constitution. The Supreme Court, therefore, was constantly faced with the problem of deciding how far laws passed by a society which was gradually forced to control many of its activities by legislation were compatible with a Constitution formed in the heyday of Individualism, which had declared, for instance, that 'no person shall be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.'

Further, the Supreme Court was the guardian of the rights of the States against the Federal Government. But the growth of American business, with corporations whose interests spread far beyond the boundaries of single States, made federal control inevitable, if there was to be any control at all. Yet the powers of the Federal Government were limited in this sphere to a very few operations, the management of the currency, the Post Office, and Copyright, and the regulation of Commerce among the several States. This last power became of vital importance. Although Marshall in his judgment in 1824 in the case of *Gibbons v. Ogden* had pointed the way for Congress to make the full exercise of this power, it is significant that it was not for over fifty years, in the Interstate Commerce Act of 1887, that Congress really availed itself of it.

The importance of the 'Commerce' clause, as an illustration of the way in which the interpretation of the Constitution of the Court has affected American history, may be seen by taking two instances. The Sherman Anti-Trust Act of 1890 prohibited 'every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States.' In the case of the *United States v. E. C. Knight Company* in 1895, the Court decided that although the great Sugar Trust controlled ninety-eight per cent. of the manufacture of refined sugar in the country, and the products of its refineries were sold and distributed among the several States, 'this was no more

than to say that trade and commerce served manufacture to fulfil its function.' The Trust was, therefore, exempt from the controlling power of Congress. Again, in the famous *Schechter Poultry Corporation* case of 1935, it was the fact that the powers of Congress were limited to the control of Commerce which led the Court to give a decision destroying the whole structure of the National Recovery Act. But in 1937, in the case of the *National Labor Relations Board v. Jones and Laughlin Steel Corporation*, the Court were not satisfied with the defendants' plea, 'that manufacturing in itself is not commerce,' and held that when it was necessary for Congress to control an 'intrastate' activity in order to regulate 'interstate commerce,' the power to do so could not be denied it. Such a decision was more important than many legislative acts.

The Supreme Court, therefore, possesses a unique power over the course of legislation. It has become a check on the Executive and the Legislative Powers of a kind that Montesquieu never dreamt of. It has been compared to the *mos maiorum* of the Roman Republic, the voice, not of the majority, but of all the varied forces of stability in the State. And what could be more surprising than the strength of these forces in the turbulent, experimental world of modern America.

And yet the boundaries between law and policy are often ill-defined, as any study of the development of the theory of the Police Power of the States will show. 'The Supreme Court,' said Mr Dooley, 'follows the Election Returns.' This was a playful exaggeration, but those changes in popular opinion, which affect elections, do influence in their time the Court itself. The episode of President Roosevelt's proposal to reform the Federal Judiciary in 1937 is peculiarly significant. His proposals seemed reasonable enough, a very moderate attempt to bring the Supreme Court into closer relationship with the dominant ideas of the day, by causing the retirement of the Judges at the age of seventy and by the addition of six members to the Supreme Court. But the plan roused fiercer opposition

than any other of the President's proposals. The Senate Committee referred to it as an 'utterly dangerous abandonment of constitutional principle' and 'a proposal that violates every sacred tradition of American democracy,' which 'under the form of the Constitution seeks to do that which is unconstitutional.' These phrases were extravagant, but they reflected that extraordinary reverence for the Constitution which is not mere fetish worship but an instinctive realization that it gives to the country a peculiar stability such as no other country possesses, except Great Britain with her somewhat similar veneration for a Constitution itself so utterly different. And yet, the change in the nature of the Court's decisions since that date, even more, perhaps, in the tone of those decisions, shows that it has been ready eventually to accept the verdict of the people, that it is not without that ultimate form of stability, the power to bend and to accept the changes brought by Time.

But, perhaps, the most important factor in binding together the United States is the peculiar system of party politics which has grown up since the Civil War. George Washington warned his people against the baneful influence of parties and of geographical sectionalism. He would have been surprised to find that it was the very development of the party system which he feared that has done most to weaken the influence of sectional interests, though it is true that it was in parties based on such interests that he saw the real danger.

It is difficult for an Englishman to understand the nature of the American party system. In his own country parties are based partly on underlying differences in human temperament, partly on the interests of different classes. His party system grew out of the reactions in this country to the French Revolution, which made a Whig like Burke fearful of revolutionary changes and a Whig like Fox instinctively welcome them. The rise of the Labour Party introduced a new element, that of class interest. As a result, the English-

man is liable to look on the Republican and Democratic parties as in some sense Conservatives and Liberals, or perhaps Conservatives and a Liberal-Labour alliance. The fact that Democratic victories in 1912 and 1932 heralded important reforms seems to strengthen this view. But it is utterly false and it is a source of profound misunderstandings.

A few instances will suffice to show the falsity of this view. There have been three great progressive revolts since the Civil War. The Populists in 1892 had their power mainly in the South and Middle West and drew their recruits largely from the Democrats. Theodore Roosevelt in 1912 and Senator La Follette in 1924, the favourite son of Wisconsin, a traditionally Republican State, seceded from the other party. When the Democrats at last regained the White House in 1884 after a quarter of a century in exile they had chosen the steady and respectable Grover Cleveland as their candidate. How is it possible to speak of the party which nominated Theodore Roosevelt as presidential candidate in 1904 as a 'conservative' party, or that which nominated Alton B. Parker in the same election as revolutionary? In 1924 the Democratic National Convention struggled through one hundred and three ballots, divided between the conservative supporters of McAdoo and the radical supporters of Governor Al Smith, before agreeing on the compromise choice of a safe candidate in John W. Davis. One has only to consider the divergence in political view between President Franklin Roosevelt and Mr Garner, his colleague as Vice-President from 1933 to 1941, to realize that the Democratic Party is not simply made up of liberal reformers, or to contrast McKinley, the protégé of the Ohio capitalists, with his Vice-President Theodore Roosevelt, to see that there are more than different shades of opinion to be found among the Republicans.

M. André Siegfried in his book, *America Comes of Age*, declared that 'the traditional program of the Democrats has been the defence of the unorganized and of the

minorities. . . . Its real function is to be in opposition, and it exists as an ever-changing coalition of discontent. . . . The Democratic party will always be supported by oppressed local communities—or those who believe themselves oppressed.' This is one of the most illuminating suggestions on American politics made by a European observer. Written in 1927, at the height of Republican prosperity, it ignores completely the fundamental change wrought by President Wilson in the ideals and structure of his party, but it provides at least a clue to the truth. In the United States there are an innumerable number of historical, social, or economic causes which may contribute to the fashioning of political parties. Most important, perhaps, is the sentiment of the 'Solid South,' the historical legacy of the Civil War which keeps the Southern States in the Democratic camp. In so far as the Democratic party is the party of the underdogs, the 'Solid South' is indeed the leader of the pack. Tammany Hall, the great political and social 'machine' of New York City, the befriendeer of the newly arrived immigrants from Europe, will throw in its weight on the same side. The 'Silver States' of Rocky Mountains were bound to the same party by economic ties in the days of the great bimetallist struggle. New England will normally vote Republican almost as solidly as the Southern States will vote the other way, and States like Iowa and Utah, looking back to the New England from which most of their citizens originally came, will usually vote Republican also. At different times different issues will play a part. After the Civil War the Democratic Party remained for some time the party of low tariffs, the Republicans of high protective walls. This issue is no longer so important. The South is now the sanctuary of Protestantism and Prohibition. Yet the Democrats always hope for support from the Roman Catholic immigrants of the Eastern States, not yet forgetful of the liquor of 'the warm south.' So the South will support the party which a Republican speaker once stigmatized as the party of 'rum, Romanism, and

rebellion,' just because the 'rebellion' to which he referred was their own rebellion, that of the Confederacy.

The miraculous virtue of the great political parties is that they bind all these sectional interests together. By doing this they may make nonsense of party labels, but they succeed in something much more important. They cause the American political system to function at all. They produce loyalties which force the divergent interests of a half-continent to make those essential compromises which are necessary in any democratic State.

The Republican party has perhaps changed less during the last eighty years than its opponent. It has remained, on the whole, the party of American prosperity and its essential creed was written by Alexander Hamilton in the early years of the United States. But there has been since then one vital change from Hamilton's doctrines, the adoption by the Republicans before the Civil War of the 'Homestead' policy, which made them the party of the pioneers as they fashioned the new States of the Middle West. The party has always contained a radical wing, but it is significant that this wing has occasionally found it necessary to break away, as when Theodore Roosevelt stood for election as a Progressive in 1912 or when Senator La Follette followed his example in 1924. It is of greater significance, though, that on both occasions the revolt was unsuccessful, and the party ranks closed. The Democratic Party has undergone more fundamental changes. As the party of minorities it was naturally eager to support the independent rights of the States, particularly when the Federal Government was in the hands of the Republicans, as was usually the case in the half-century after the Civil War. But when it became clear that these State rights were usually exercised on behalf of the capitalist class, that the manufacturers could only be controlled by federal action, the party changed its view. The turning-point came with the election of Woodrow Wilson in 1912. His greatest achievement was to turn a party which

was the champion of the individual States into one which supported strong federal action. In spite of the misfortunes which the Democrats experienced in the years after the war of 1917-1918, this work was never undone and it led eventually to the party consenting to undertake the great experiment of the New Deal. In 1932, 1936, and 1940 the Democratic Party Platforms did not think the rights of the States worth mentioning. In fact in 1936 it stated caustically, 'The Republican platform proposes to meet many pressing national problems solely by the action of the separate States. We know that drought, dust storms, floods, minimum wages, maximum hours, child labour and working conditions in industry, monopolistic and unfair business practices cannot be adequately handled exclusively by forty-eight separate State legislatures, forty-eight separate State administrations, forty-eight separate State courts.' Woodrow Wilson had effected the most important change in American party politics since the Civil War.

The New Deal is a revolution, an immense administrative experiment. Like all revolutions it has its roots in the past. It works largely through Government commissions, and the first Federal Commission was set up by the Interstate Commerce Act in 1887. The financial policy of the experiment goes back to W. J. Bryan and the Populists and even further. Government control of Big Business had been demanded by reformers of both parties for fifty years, and concern for the soil and forests of America was dear to the heart of Theodore Roosevelt. Even the Trusts themselves were models for the new regulations for Industry. The attempts to find Social Security are a legacy of Woodrow Wilson's New Freedom. What is new in President Franklin Roosevelt's policy has been its scope and courage. The problems of half a continent in the most dangerous state of economic depression have been handled vigorously and boldly, but they have also been dealt with constitutionally and openly. There have been mistakes enough, but there has been the inspiration

that comes from a readiness to risk mistakes. The provision of almost dictatorial powers, granted by a constitutional assembly and subject to review by a Court, turns out to be a natural development of American history. The importance of the New Deal in the history of the world will depend eventually on its success or failure in coping with the problems of modern industrial society. Its immediate importance is as an act of faith, an assertion that they can be solved. President Roosevelt made the finest justification of his policy in his speech accepting renomination in 1936, when he said, 'Governments can err. Presidents do make mistakes, but the immortal Dante tells us that divine justice weighs the sins of the cold-blooded and the sins of the warm-hearted in different scales. Better the occasional faults of a Government that lives in a spirit of charity than the consistent omissions of a Government frozen in the ice of its own indifference.'

American politics are now, therefore, a matter of immense importance for the future of the whole world. This is a strange reversal of George Washington's dread that, by entanglement with foreign Powers, the internal affairs of the United States would be affected by European interests. The foreign policy of the United States, as he laid it down, was to be defensive and even negative. For many years it was possible for it to become occasionally aggressive and positive without those political connections with Europe that he feared. It was still a policy for the Western Hemisphere. At the end of the nineteenth century, however, there came a real revolution. With the annexation of Hawaii and the Philippine Islands in 1898, the United States became more than an American Power. She won an Empire. The extension of her commercial interests had already heralded the change. In China it led to her taking her place among the great Powers on one of their familiar battlegrounds. In Central and South America it brought about a fundamental change of emphasis in the conception of the Monroe Doctrine, which was transformed into something very like a claim to sove-

reignty in the New World south of the Canadian frontier.

Complete separation from the affairs of Europe had, in fact, never been possible. This had been proved once for all by the failure of Jefferson's Embargo Act of 1807. America was tied too closely to Europe by trade. Washington's 'great rule of conduct' for the United States 'in regard to foreign nations was in extending their commercial relations to have with them as little political connection as possible'; and it was an impossibility. The reason why the United States had time to forget this lesson was the long period during the nineteenth century which was free from any maritime war, and this was the result of British naval supremacy. In 1914 there seemed at first little doubt that the country would continue to play its traditional role, but it was not long before it learnt that the old difficulties of neutrality had not altered. The Gore-McLemore Resolution and the resignation of W. J. Bryan were a new attempt to resume Jefferson's policy. The failure to remain neutral was as complete as a century before.

And there were other ties with Europe than the commercial, less tangible perhaps, and less strong, but of more than negligible importance. The Monroe Doctrine had been based not only on a desire to defend the Western Hemisphere but also on a profound detestation of the policies of the Holy Alliance. It was with difficulty that John Quincy Adams had prevented President Monroe from actively supporting the Greeks in the War of Independence, and Daniel Webster, who felt that the Americans had as much in common with the Greeks as with 'the inhabitants of the Andes and the dwellers on the borders of the Vermilion Sea,' was bitterly disappointed at the mere passing reference to their cause in the presidential message. Americans could not help their interest in Italian or Hungarian or Boer patriots. And the war of 1914-1918 raised issues that transcended commerce, leading the President to his tremendous attempt to persuade the nations to

accept a peace based on 'the principle of justice to all peoples and all nationalities, and their right to live on equal terms of liberty and safety with one another, whether they be strong or weak.'

When the attitude of America in 1939 is considered there appears a strange contradiction. On the one hand the Isolationists had won great victories. They believed that the policy of Washington, freedom from foreign entanglements, could be enforced by the policy of Jefferson, a voluntary cessation of commercial intercourse with England, and in the Johnson Act of 1934 and the Neutrality Act of 1937 they were firmly entrenched in their position. The reaction from the idealism of Woodrow Wilson; the sense of humiliation when this idealism received little support at Versailles and when the Treaty signed there failed to secure ratification by the Senate; the controversy with the Allies over war debts; the immense prosperity of the twenties which had made Europe seem decadent in contrast; all these had strengthened the hands of those who wished to have no truck with the Old World. But actually stronger forces were at work. The rise of Fascism, and particularly of its German counterpart, had made it clear to many Americans that support for England could hardly be covered by Washington's phrase when he warned them not to entangle their peace and prosperity 'in the toils of European ambition, rivalship, interest, humour, or caprice.' The United States was not merely a democratic State; it was a country engaged in carrying out a great democratic experiment. And so President Roosevelt, at the same moment as he issued the Proclamation under the Neutrality Act which seemed to launch the country on the Isolationist path, spoke also an Appeal for Neutrality to the people which was a pointed expression of the strength of their links with one side in the struggle. While Wilson in 1914 had implored Americans to be 'impartial in thought as well as in action,' President Roosevelt in 1939, while declaring that America would remain a neutral nation, added that he could not 'ask

that every American remain neutral in thought as well.'

America, then, already knew where she stood when the victories of the Axis in the summer of 1940 brought about a complete revolution in her official attitude. It is true that for the first time the United States was itself seriously threatened. It was not only that the aeroplane had made the Atlantic Ocean a far less formidable barrier. The threat to the British Navy made clear to her that it was English ships that had made that Ocean a barrier at all. And the alliance of the Axis Powers with Japan was the first formal threat offered to her in her history. But the shock of the Teutonic onslaught and the moral revulsion at the treachery of Italy disclosed something more fundamental than the sentiment of fear. 'Neither those who sprang from that ancient stock nor those who have come hither in later years,' said the President in his great speech of 10 June 1940, 'can be indifferent to the destruction of freedom in their ancestral lands across the seas.' America felt herself at one with the civilization which was in danger.

Her kinship with this civilization is clear from any but a superficial study of the documents of her history. The Declaration of Independence itself was based on the philosophy of the English Whigs, and this philosophy was a solid product of English history. The authors of the Constitution openly made use of English experience. But the greatest debt the United States owed to England was the English Common Law and the peculiar political practicality which seems to be based on it. Perhaps Blackstone's *Commentaries* is the surest link between the two peoples, and we may remember how it was the discovery of this work at the bottom of an old barrel which turned the greatest American statesman into the way of politics. There is a 'studied optimism,' as Dicey says, in Blackstone, which seems best to express the English and American attitude towards politics. On this alone, perhaps, can a democratic government be based. The Englishman, then, reading these

documents of American history, though he will find much that is strange, will usually find himself at home, and to-day, as never before, he will feel that the great speeches and addresses of American statesmen, the leading judgments of the Supreme Court, the laws which have marked the progress of its history, are part of his own history too.

#### ACKNOWLEDGEMENT

As stated in the Foreword to Volume IV, previously published, this series of documents owes much to the kindness of Professor H. S. Commager of Columbia University, who allowed me to make use of his *Documents of American History* (F. S. Crofts & Co., New York). I should like to repeat my thanks and to refer especially to Nos. 20, 37, and 43 in this volume. In these cases I had to rely entirely on the extracts he made for his own collection.

ROBERT BIRLEY

November 1942.

Mr. Vachel Lindsey's Poem (Number 48c), from his *Collected Poems*, is printed by permission of The Macmillan Company, New York.

## I. THE FREEDMEN'S BUREAU ACT, 1865

[At the end of the Civil War the Government was faced with the immense problem of dealing with the thousands of emancipated negroes. Before the assassination of Lincoln, Congress on 3 March 1865 had passed an Act setting up a Bureau in the War Department to look after the freedmen, to feed and clothe them, and to make them grants from abandoned lands in the South. Until Congress assumed control of the situation the Bureau did much useful work, though the problem was actually far too large to be dealt with by a kind of relief measure. On 16 July 1866 a supplementary Act enlarging the powers of the Bureau was passed over the President's veto. Many of the 'carpet-baggers' who exercised influence in the Southern States in the Republican interest were agents of the Bureau.]\*

*An Act to establish a Bureau for the Relief of Freedmen and Refugees.*

*Be it enacted, That there is hereby established in the War Department, to continue during the present war of rebellion, and for one year thereafter, a bureau of refugees, freedmen, and abandoned lands, to which shall be committed, as hereinafter provided, the supervision and management of all abandoned lands, and the control of all subjects relating to refugees and freedmen from rebel States, or from any district of country within the territory embraced in the operations of the army, under such rules and regulations as may be prescribed by the head of the bureau and approved by the President. The said bureau shall be under the management and control of a commissioner to be appointed by the President, by and with the advice and consent of the Senate. . . .*

**SEC. 2.** *That the Secretary of War may direct such issues of provisions, clothing, and fuel, as he may deem*

needful for the immediate and temporary shelter and supply of destitute and suffering refugees and freedmen and their wives and children, under such rules and regulations as he may direct.

SEC. 3. That the President may, by and with the advice and consent of the Senate, appoint an assistant commissioner for each of the States declared to be in insurrection, not exceeding ten in number, who shall, under the direction of the commissioner, aid in the execution of the provisions of this Act; . . . And any military officer may be detailed and assigned to duty under this Act without increase of pay or allowances. . . .

SEC. 4. That the commissioner, under the direction of the President, shall have authority to set apart, for the use of loyal refugees and freedmen, such tracts of land within the insurrectionary States as shall have been abandoned, or to which the United States shall have acquired title by confiscation or sale, or otherwise, and to every male citizen, whether refugee or freedman, as aforesaid, there shall be assigned not more than forty acres of such land, and the person to whom it was so assigned shall be protected in the use and enjoyment of the land for the term of three years at an annual rent not exceeding six per centum upon the value of such land, as it was appraised by the State authorities in the year eighteen hundred and sixty, for the purpose of taxation, and in case no such appraisal can be found, then the rental shall be based upon the estimated value of the land in said year, to be ascertained in such manner as the commissioner may by regulation prescribe. At the end of said term, or at any time during said term, the occupants of any parcels so assigned may purchase the land and receive such title thereto as the United States can convey, upon paying therefor the value of the land, as ascertained and fixed for the purpose of determining the annual rent aforesaid. . . .

## 2. JOHNSON'S PROCLAMATION OF AMNESTY, 1865

[Andrew Johnson had been nominated as candidate for the Vice-Presidency by the National Union Party as a War Democrat to symbolize the alliance between the Republicans and those members of the Democratic Party who supported the Union. He was of humble birth, from Tennessee, a State which had seceded. On succeeding Lincoln as President, he continued his policy of treating the conquered States with moderation, and until Congress met, in December 1865, he was in a position to do this successfully. His Proclamation of Amnesty of 29 May 1865 was very similar to Lincoln's of 8 December 1863. His inclusion, in section thirteen, among those excepted from the amnesty of the richer Confederates, shows his bias against the large land-owners. He had entered politics as the representative of the small farmers against both the business men of the North and the owners of large estates in the South.]

*By the President of the United States of America*  
*A Proclamation*

Whereas the President of the United States, on the 8th day of December, A.D. 1863, and on the 26th day of March, A.D. 1864, did, with the object to suppress the existing rebellion, to induce all persons to return to their loyalty, and to restore the authority of the United States, issue proclamations offering amnesty and pardon to certain persons who had, directly or by implication, participated in the said rebellion; and

Whereas many persons who had so engaged in said rebellion have, since the issuance of said proclamations, failed or neglected to take the benefits offered thereby; and

Whereas many persons who have been justly deprived of all claim to amnesty and pardon thereunder by reason of their participation, directly or by implication,

in said rebellion and continued hostility to the Government of the United States since the date of said proclamations now desire to apply for and obtain amnesty and pardon:

To the end, therefore, that the authority of the Government of the United States may be restored and that peace, order, and freedom may be established, I, Andrew Johnson, President of the United States, do proclaim and declare that I hereby grant to all persons who have, directly or indirectly, participated in the existing rebellion, except as hereinafter excepted, amnesty and pardon, with restoration of all rights of property, except as to slaves . . . but upon the condition, nevertheless, that every such person shall take and subscribe the following oath (or affirmation) and thenceforward keep and maintain said oath inviolate, and which oath shall be registered for permanent preservation and shall be of the tenor and effect following, to wit:

I, \_\_\_\_\_, do solemnly swear or (affirm), in presence of Almighty God, that I will henceforth faithfully support, protect, and defend the Constitution of the United States and the Union of the States thereunder, and that I will in like manner abide by and faithfully support all laws and proclamations which have been made during the existing rebellion with reference to the emancipation of slaves. So help me God.

The following classes of persons are excepted from the benefits of this proclamation:

First. All who are or shall have been pretended civil or diplomatic officers or otherwise domestic or foreign agents of the pretended Confederate government.

Second. All who left judicial stations under the United States to aid the rebellion.

Third. All who shall have been military or naval officers of said pretended Confederate government above the rank of colonel in the army or lieutenant in the navy.

Fourth. All who left seats in the Congress of the United States to aid the rebellion.

Fifth. All who resigned or tendered resignations of their commissions in the Army or Navy of the United States to evade duty in resisting the rebellion.

Sixth. All who have engaged in any way in treating otherwise than lawfully as prisoners of war persons found in the United States service as officers, soldiers, seamen, or in other capacities.

Seventh. All persons who have been or are absentees from the United States for the purpose of aiding the rebellion.

Eighth. All military and naval officers in the rebel service who were educated by the Government in the Military Academy at West Point or the United States Naval Academy.

Ninth. All persons who held the pretended offices of governors of States in insurrection against the United States.

Tenth. All persons who left their homes within the jurisdiction and protection of the United States and passed beyond the Federal military lines into the pretended Confederate States for the purpose of aiding the rebellion.

Eleventh. All persons who have been engaged in the destruction of the commerce of the United States upon the high seas and all persons who have made raids into the United States from Canada or been engaged in destroying the commerce of the United States upon the lakes and rivers that separate the British Provinces from the United States.

Twelfth. All persons who, at the time when they seek to obtain the benefits hereof by taking the oath herein prescribed, are in military, naval, or civil confinement or custody, or under bonds of the civil, military, or naval authorities or agents of the United States as prisoners of war, or persons detained for offences of any kind, either before or after conviction.

Thirteenth. All persons who have voluntarily participated in said rebellion and the estimated value of whose taxable property is over \$20,000.

Fourteenth. All persons who have taken the oath of

amnesty as prescribed in the President's proclamation of 8 December, A.D. 1863, or an oath of allegiance to the Government of the United States since the date of said proclamation and who have not thenceforward kept and maintained the same inviolate.

*Provided*, That special application may be made to the President for pardon by any person belonging to the excepted classes, and such clemency will be liberally extended as may be consistent with the facts of the case and the peace and dignity of the United States.

The Secretary of State will establish rules and regulations for administering and recording the said amnesty oath, so as to insure its benefit to the people and guard the Government against fraud.

### 3. JOHNSON'S PROCLAMATION APPOINT- ING A GOVERNOR FOR NORTH CAROLINA, 1865

[President Johnson in his Annual Message of 4 December 1865 explained his policy of Reconstruction in these words: "Gradually and quietly, and by almost imperceptible steps, I have sought to restore the rightful energy of the General Government and of the States. To that end, provisional governors have been appointed for the States, conventions called, governors elected, legislatures assembled, and Senators and Representatives chosen to the Congress of the United States." Between 29 May 1865, when he issued the proclamation with regard to North Carolina, and 13 July, Johnson appointed governors for Mississippi, Georgia, Texas, Alabama, and South Carolina. The North Carolina proclamation sets out the duties of the governor and the means whereby the State was to be restored to its right position in the Union.]

Whereas the fourth section of the fourth article of the Constitution of the United States declares that the United States shall guarantee to every State in the

Union a republican form of government, and shall protect each of them against invasion and domestic violence; and whereas the President of the United States is, by the constitution, made commander-in-chief of the army and navy, as well as chief civil executive officer of the United States, and is bound by solemn oath faithfully to execute the office of President of the United States, and to take care that the laws be faithfully executed; and whereas the rebellion, which has been waged by a portion of the people of the United States against the properly constituted authorities of the government thereof, in the most violent and revolting form, but whose organized and armed forces have now been almost entirely overcome, has, in its revolutionary progress, deprived the people of the State of North Carolina of all civil government; and whereas it becomes necessary and proper to carry out and enforce the obligations of the United States to the people of North Carolina, in securing them in the enjoyment of a republican form of government:

Now, therefore, in obedience to the high and solemn duties imposed upon me by the Constitution of the United States, and for the purpose of enabling the loyal people of said State to organize a State government, whereby justice may be established, domestic tranquillity insured, and loyal citizens protected in all their rights of life, liberty, and property, I, ANDREW JOHNSON, President of the United States, and commander-in-chief of the army and navy of the United States, do hereby appoint William W. Holden Provisional Governor of the State of North Carolina, whose duty it shall be, at the earliest practicable period, to prescribe such rules and regulations as may be necessary and proper for convening a convention, composed of delegates to be chosen by that portion of the people of said State who are loyal to the United States, and no others, for the purpose of altering or amending the constitution thereof; and with authority to exercise, within the limits of said State, all the powers necessary and proper to enable such loyal people of the State of

8 *Proclamation appointing a Governor for N. Carolina, 1865*

North Carolina to restore said State to its constitutional relations to the Federal Government, and to present such a republican form of State government as will entitle the State to the guarantee of the United States therefor, and its people to protection by the United States against invasion, insurrection, and domestic violence: *Provided* that, in any election that may be hereafter held for choosing delegates to any State convention as aforesaid, no person shall be qualified as an elector, or shall be eligible as a member of such convention, unless he shall have previously taken and subscribed the oath of amnesty, as set forth in the President's Proclamation of 29 May, A.D. 1865, and is a voter qualified as prescribed by the constitution and laws of the State of North Carolina in force immediately before the 20th day of May, A.D. 1861, the date of the so-called ordinance of secession; and the said convention, when convened, or the legislature that may be thereafter assembled, will prescribe the qualification of electors, and the eligibility of persons to hold office under the constitution and laws of the State—a power the people of the several States composing the Federal Union have rightfully exercised from the origin of the government to the present time.

And I do hereby direct—

*First.* That the military commander of the department, and all officers and persons in the military or naval service, aid and assist the said provisional governor in carrying into effect this Proclamation, and they be enjoined to abstain from, in any way, hindering, impeding, or discouraging the loyal people from the organization of a State government as herein authorized.

*Second.* That the Secretary of State proceed to put in force all laws of the United States, the administration whereof belongs to the State Department, applicable to the geographical limits aforesaid.

*Third.* That the Secretary of the Treasury proceed to nominate for appointment assessors of taxes, and collectors of customs and internal revenue, and such other officers of the Treasury Department as are

authorized by law, and put in execution the revenue laws of the United States within the geographical limits aforesaid. In making appointments, the preference shall be given to qualified loyal persons residing within the districts where their respective duties are to be performed. But if suitable residents of the districts shall not be found, then persons residing in other States or districts shall be appointed.

*Fourth.* That the Postmaster-General proceed to establish post-offices and post-routes, and put into execution the postal laws of the United States within the said State, giving to loyal residents the preference of appointment; but if suitable residents are not found, then to appoint agents, etc., from other States.

*Fifth.* That the district judge for the judicial district in which North Carolina is included proceed to hold courts within said State, in accordance with the provisions of the Act of Congress. The Attorney-General will instruct the proper officers to libel, and bring to judgment, confiscation, and sale, property subject to confiscation, and enforce the administration of justice within said State in all matters within the cognizance and jurisdiction of the federal courts.

*Sixth.* That the Secretary of the Navy take possession of all public property belonging to the Navy Department within said geographical limits, and put in operation all Acts of Congress in relation to naval affairs having application to the said State.

*Seventh.* That the Secretary of the Interior put in force the laws relating to the Interior Department applicable to the geographical limits aforesaid.

#### 4. THE BLACK CODE OF MISSISSIPPI, 1865

[The new State legislatures in the South passed a series of laws, known as the 'Black Codes,' dealing with the status of the emancipated negroes. These seemed moderate enough

to the South, and they were largely based on the Vagrancy Laws existent in Northern States, but to the Radicals in the Republican Party they seemed proof that the rebels had learnt nothing. Most of them were later suspended by the military governors, but when military rule was eventually abandoned they were largely re-enacted. The 'Black Code' of Mississippi, a series of Acts passed in November 1865, was among the more stringent. Unfortunately it was the only one entirely enacted before Congress met.]

· *Civil Rights of Freedmen in Mississippi*

SEC. 1. *Be it enacted*, That all freedmen, free negroes, and mulattoes may sue and be sued, implead and be impleaded, in all the courts of law and equity of this State, and may acquire personal property, and choses in action, by descent or purchase, and may dispose of the same in the same manner and to the same extent that white persons may: *Provided*, That the provisions of this section shall not be so construed as to allow any freedman, free negro, or mulatto to rent or lease any lands or tenements except in incorporated cities or towns, in which places the corporate authorities shall control the same.

SEC. 2. All freedmen, free negroes, and mulattoes may intermarry with each other in the same manner and under the same regulations that are provided by law for white persons: *Provided*, That the clerk of probate shall keep separate records of the same.

SEC. 3. All freedmen, free negroes, or mulattoes who do now and have herebefore lived and cohabited together as husband and wife shall be taken and held in law as legally married, and the issue shall be taken and held as legitimate for all purposes; that it shall not be lawful for any freedman, free negro, or mulatto to intermarry with any white person; nor for any white person to intermarry with any freedman, free negro, or mulatto; and any person who shall so intermarry, shall be deemed guilty of felony, and on conviction thereof shall be confined in the State penitentiary for life; and those shall be deemed freedmen, free negroes, and

mulattoes who are of pure negro blood, and those descended from a negro to the third generation, inclusive, though one ancestor in each generation may have been a white person.

SEC. 4. In addition to cases in which freedmen, free negroes, and mulattoes are now by law competent witnesses, freedmen, free negroes, or mulattoes shall be competent in civil cases, when a party or parties to the suit, either plaintiff or plaintiffs, defendant or defendants, and a white person or white persons is or are the opposing party or parties, plaintiff or plaintiffs, defendant or defendants. They shall also be competent witnesses in all criminal prosecutions where the crime charged is alleged to have been committed by a white person upon or against the person or property of a freedman, free negro, or mulatto: *Provided*, that in all cases said witnesses shall be examined in open court, on the stand; except, however, they may be examined before the grand jury, and shall in all cases be subject to the rules and tests of the common law as to competency and credibility. . . .

SEC. 7. Every civil officer shall, and every person may, arrest and carry back to his or her legal employer any freedman, free negro, or mulatto who shall have quit the service of his or her employer before the expiration of his or her term of service without good cause; and said officer and person shall be entitled to receive for arresting and carrying back every deserting employe aforesaid the sum of five dollars, and ten cents per mile from the place of arrest to the place of delivery; and the same shall be paid by the employer, and held as a set-off for so much against the wages of said deserting employe: *Provided*, that said arrested party, after being so returned, may appeal to the justice of the peace or member of the board of police of the county, who, on notice to the alleged employer, shall try summarily whether said appellant is legally employed by the alleged employer, and has good cause to quit said employer; either party shall have the right of appeal to the county court, pending which the alleged deserter shall be remanded

to the alleged employer or otherwise disposed of, as shall be right and just; and the decision of the county court shall be final. . . .

SEC. 9. If any person shall persuade or attempt to persuade, entice, or cause any freedman, free negro, or mulatto to desert from the legal employment of any person before the expiration of his or her term of service, or shall knowingly employ any such deserting freedman, free negro, or mulatto, or shall knowingly give or sell to any such deserting freedman, free negro, or mulatto, any food, raiment, or other thing, he or she shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than twenty-five dollars and not more than two hundred dollars and the costs; and if said fine and costs shall not be immediately paid, the court shall sentence said convict to not exceeding two months' imprisonment in the county jail, and he or she shall moreover be liable to the party injured in damages: *Provided*, if any person shall, or shall attempt to, persuade, entice, or cause any freedman, free negro, or mulatto to desert from any legal employment of any person, with the view to employ said freedman, free negro, or mulatto without the limits of this State, such person, on conviction, shall be fined not less than fifty dollars, and not more than five hundred dollars and costs; and if said fine and costs shall not be immediately paid, the court shall sentence said convict to not exceeding six months imprisonment in the county jail. . . .

### *Mississippi Apprentice Law*

SEC. 1. It shall be the duty of all sheriffs, justices of the peace, and other civil officers of the several counties in this State, to report to the probate courts of their respective counties semi-annually, at the January and July terms of said courts, all freedmen, free negroes, and mulattoes, under the age of eighteen, in their respective counties, beats, or districts, who are orphans, or whose parent or parents have not the means or who refuse to provide for and support said minors; and

thereupon it shall be the duty of said probate court to order the clerk of said court to apprentice said minors to some competent and suitable person, on such terms as the court may direct, having a particular care to the interest of said minor: *Provided*, that the former owner of said minors shall have the preference when, in the opinion of the court, he or she shall be a suitable person for that purpose.

SEC. 2. The said court shall be fully satisfied that the person or persons to whom said minor shall be apprenticed shall be a suitable person to have the charge and care of said minor, and fully to protect the interest of said minor. The said court shall require the said master or mistress to execute bond and security, payable to the State of Mississippi, conditioned that he or she shall furnish said minor with sufficient food and clothing; to treat said minor humanely; furnish medical attention in case of sickness; teach, or cause to be taught, him or her to read and write, if under fifteen years old, and will conform to any law that may be hereafter passed for the regulation of the duties and relation of master and apprentice. . . .

SEC. 3. In the management and control of said apprentice, said master or mistress shall have the power to inflict such moderate corporal chastisement as a father or guardian is allowed to inflict on his or her child or ward at common law: *Provided*, that in no case shall cruel or inhuman punishment be inflicted.

SEC. 4. If any apprentice shall leave the employment of his or her master or mistress without his or her consent, said master or mistress may pursue and recapture said apprentice, and bring him or her before any justice of the peace of the county, whose duty it shall be to remand said apprentice to the service of his or her master or mistress; and in the event of a refusal on the part of said apprentice so to return, then said justice shall commit said apprentice to the jail of said county, on failure to give bond, to the next term of the county court; and it shall be the duty of said court at the first term thereafter to investigate said case, and if the court

shall be of opinion that said apprentice left the employment of his or her master or mistress without good cause, to order him or her to be punished, as provided for the punishment of hired freedmen, as may be from time to time provided for by law for desertion, until he or she shall agree to return to the service of his or her master or mistress: . . . if the court shall believe that said apprentice had good cause to quit his said master or mistress, the court shall discharge said apprentice from said indenture, and also enter a judgment against the master or mistress for not more than one hundred dollars, for the use and benefit of said apprentice. . . .

### *Mississippi Vagrant Law*

SEC. 2. All freedmen, free negroes, and mulattoes in this State, over the age of eighteen years, found on the second Monday in January 1866, or thereafter, with no lawful employment or business, or found unlawfully assembling themselves together, either in the day or night time, and all white persons so assembling themselves with freedmen, free negroes, or mulattoes, or usually associating with freedmen, free negroes, or mulattoes, on terms of equality, or living in adultery or fornication with a freed woman, free negro, or mulatto, shall be deemed vagrants, and on conviction thereof shall be fined in a sum not exceeding, in the case of a freedman, free negro, or mulatto, fifty dollars, and a white man two hundred dollars, and imprisoned at the discretion of the court, the free negro not exceeding ten days, and the white man not exceeding six months. . . .

SEC. 7. If any freedman, free negro, or mulatto shall fail or refuse to pay any tax levied according to the provisions of the sixth section of this Act, it shall be *prima facie* evidence of vagrancy, and it shall be the duty of the sheriff to arrest such freedman, free negro, or mulatto or such person refusing or neglecting to pay such tax, and proceed at once to hire for the shortest time such delinquent tax-payer to any one who will pay

the said tax, with accruing costs, giving preference to the employer, if there be one.

### *Penal Laws of Mississippi*

SEC. 1. *Be it enacted*, That no freedman, free negro, or mulatto, not in the military service of the United States Government, and not licensed so to do by the board of police of his or her county, shall keep or carry fire-arms of any kind, or any ammunition, dirk or bowie knife, and on conviction thereof in the county court shall be punished by fine, not exceeding ten dollars, and pay the costs of such proceedings, and all such arms or ammunition shall be forfeited to the informer; and it shall be the duty of every civil and military officer to arrest any freedman, free negro, or mulatto found with any such arms or ammunition, and cause him or her to be committed to trial in default of bail.

SEC. 2. Any freedman, free negro, or mulatto committing riots, routs, affrays, trespasses, malicious mischief, cruel treatment to animals, seditious speeches, insulting gestures, language, or acts, or assaults on any person, disturbance of the peace, exercising the function of a minister of the Gospel without a license from some regularly organized church, vending spirituous or intoxicating liquors, or committing any other misdemeanor, the punishment of which is not specifically provided for by law, shall, upon conviction thereof in the county court, be fined not less than ten dollars, and not more than one hundred dollars, and may be imprisoned at the discretion of the court, not exceeding thirty days.

SEC. 3. If any white person shall sell, lend, or give to any freedman, free negro, or mulatto any fire-arms, dirk or bowie knife, or ammunition, or any spirituous or intoxicating liquors, such person or persons so offending, upon conviction thereof in the county court of his or her county, shall be fined not exceeding fifty dollars, and may be imprisoned, at the discretion of the court, not exceeding thirty days.

SEC. 4. All the penal and criminal laws now in force in this State, defining offences, and prescribing the mode of punishment for crimes and misdemeanors committed by slaves, free negroes, or mulattoes, be and the same are hereby re-enacted, and declared to be in full force and effect, against freedmen, free negroes, and mulattoes, except so far as the mode and manner of trial and punishment have been changed or altered by law.

SEC. 5. If any freedman, free negro, or mulatto, convicted of any of the misdemeanors provided against in this Act, shall fail or refuse for the space of five days, after conviction, to pay the fine and costs imposed, such person shall be hired out by the sheriff or other officer, at public outcry, to any white person who will pay said fine and all costs, and take said convict for the shortest time.

## 5. THE THIRTEENTH AMENDMENT, 1865

[The Thirteenth Amendment, abolishing Slavery in the United States, regularized the position created by Lincoln's Emancipation Proclamation of 1 January 1863. In 1864 a resolution for such an amendment passed the Senate but had failed in the House of Representatives. Early in 1865, however, it had secured the necessary two-thirds majority and had been sent to the States for ratification. Lincoln had insisted that the States, of which three-fourths had to ratify the amendment before it came into effect, should include all the States, the rebels included. On 18 December 1865 the amendment had been ratified by twenty-seven out of the thirty-six States and so came into force.]

SEC. 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation.

## 6. JOINT RESOLUTION ON THE REPRESENTATION OF THE REBEL STATES, 1866

[When Congress met in December 1865 the Radicals raised immediately the question of the representation of the rebel States. A resolution was passed committing all matters connected with the admission of these members and with the Reconstruction of the South to a Joint Committee of Fifteen. On 15 February 1866 a sub-committee, which had inquired into conditions in Tennessee, recommended that the members of that State should be admitted, but the Radicals on the Committee of Fifteen succeeded in forcing a reconsideration of this decision, and a new sub-committee recommended that Tennessee should not be re-admitted until various guarantees had been given. On 19 February Johnson vetoed a Bill enlarging the powers of the Freedmen's Bureau, and on 20 February 1865 both Houses passed a resolution excluding senators and representatives from any rebel State until Congress should have declared the State entitled to representation.]

That, in order to close agitation upon a question which seems likely to disturb the action of the Government, as well as to quiet the uncertainty which is agitating the minds of the people of the eleven States which have been declared to be in insurrection, no Senator or Representative shall be admitted into either branch of Congress from any of said States until Congress shall have declared such State entitled to such representation.

## 7. THE CIVIL RIGHTS ACT, 1866

[On 5 January 1866 Senator Trumbull introduced a Bill which countered the decision in the *Dred Scott* case of 1857 by declaring that 'all persons born in the United States and not subject to any foreign Power, excluding Indians not taxed' were 'citizens of the United States,' and that all

'such citizens, of every race and colour, without regard to any previous condition of slavery' had the same rights as those enjoyed by white citizens. Further, the Federal Courts were given jurisdiction over any breaches of this Act. In March the Bill passed both Houses, and on 27 March it was vetoed by the President. On 6 April the Senate passed the Bill over the veto by 33 votes to 15, and on 9 April the House by 132 votes to 41.

The Civil Rights Act was the first Bill of real importance in American history to be passed over the President's veto. Doubt as to the constitutional validity of the Act led to the proposal for the Fourteenth Amendment of the Constitution (see No. 8).]

*An Act to protect all Persons in the United States in their Civil Rights, and furnish the Means of their Vindication.*

*Be it enacted*, That all persons born in the United States and not subject to any foreign Power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding.

*SEC. 2. And be it further enacted*, That any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by this Act, or to different punishment, pains, or penalties on account of such person having at any time been held in a con-

dition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, or by reason of his color or race, than is prescribed for the punishment of white persons, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both, in the discretion of the court.

SEC. 3. *And be it further enacted*, That the district courts of the United States, within their respective districts, shall have, exclusively of the courts of the several States, cognizance of all crimes and offences committed against the provisions of this Act, and also, concurrently with the circuit courts of the United States, of all causes, civil and criminal, affecting persons who are denied or cannot enforce in the courts or judicial tribunals of the State or locality where they may be any of the rights secured to them by the first section of this Act. . . .

SEC. 4. *And be it further enacted*, That the district attorneys, marshals, and deputy marshals of the United States, the commissioners appointed by the circuit and territorial courts of the United States, with powers of arresting, imprisoning, or bailing offenders against the laws of the United States, the officers and agents of the Freedmen's Bureau, and every other officer who may be specially empowered by the President of the United States, shall be, and they are hereby, specially authorized and required, at the expense of the United States, to institute proceedings against all and every person who shall violate the provisions of this Act, and cause him or them to be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States or territorial court as by this Act has cognizance of the offence. . . .

SEC. 8. *And be it further enacted*, That whenever the President of the United States shall have reason to believe that offences have been or are likely to be committed against the provisions of this Act within any judicial district, it shall be lawful for him, in his discretion, to direct the judge, marshal, and district

attorney of such district to attend at such place within the district, and for such time as he may designate, for the purpose of the more speedy arrest and trial of persons charged with a violation of this Act; and it shall be the duty of every judge or other officer, when any such requisition shall be received by him, to attend at the place and for the time therein designated.

SEC. 9. *And be it further enacted*, That it shall be lawful for the President of the United States, or such person as he may empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia, as shall be necessary to prevent the violation and enforce the due execution of this Act.

SEC. 10. *And be it further enacted*, That upon all questions of law arising in any cause under the provisions of this Act a final appeal may be taken to the Supreme Court of the United States.

## 8. THE FOURTEENTH AMENDMENT, 1866-1868

[The Fourteenth Amendment was the longest, the most important, and the most discussed amendment to the Constitution of the United States.

The Amendment was reported to Congress from the Joint Committee on Reconstruction on 30 April 1866, and was passed with the requisite majority on 13 June. It was then rejected by the States of Delaware, Maryland, and Kentucky, and by the late Confederate States. The Reconstruction Act of 2 March 1867 ensured its ratification by six of these latter States, but the ratifications by the legislatures of New Jersey and Ohio were rescinded. On account of this confused situation, Seward, the Secretary of State, issued a proclamation stating the facts, that the Amendment had been ratified by the legislature of twenty-three States and by the bodies 'avowing themselves to be and acting as' the legislatures of six more States, that the legislatures of New Jersey and Ohio, after ratifying, had withdrawn their consent, and that, if these ratifications were considered irrevocable, the Amendment had been ratified by three-fourths of all the

States and was valid. On the following day Congress passed a resolution naming the twenty-nine ratifying States and declaring that the requisite majority had been obtained. The Amendment was ratified by Georgia on 21 July, and on 28 July 1868 Seward issued a final proclamation of its adoption.

The Fourteenth Amendment in fact consisted of at least four separate amendments to the Constitution. The fourth section abrogated the Confederate debts and this provision had already been accepted by the Southern States before Congressional was substituted for Presidential Reconstruction. The second section was intended to overcome any future disfranchisement of negroes in the Southern States. Its failure to achieve this end led to the adoption of the Fifteenth Amendment. The third section was a sweeping measure of disqualification for Confederate supporters. It was by insisting that the rebel States should ratify an amendment which included this section before they were allowed representation in Congress that the radical leaders made the Reconstruction Act of 2 March 1867 the main instrument for the Republican domination of the Union.

But the first section was of even greater importance. For the first time the protection of the Federal Government was granted to rights that might be invaded by the States, reversing entirely their traditional relationship. The section, however, did not only protect the recently emancipated negroes. The sentence which reads, 'nor shall any State deprive any *person* of life, liberty or property *without due process of law*', was to have the most far-reaching effects. It must be remembered that in law a corporation is a 'person.' The Fourteenth Amendment could be used, therefore, to protect corporations against State legislation which might be held to deprive them of property *without due process of law*, and it proved to be a most powerful bulwark for the capitalist interests. The Amendment led to a large number of cases before the Supreme Court, where its scope has gradually been defined, such as the *Slaughter-house* cases, *Munn v. Illinois*, *Lochner v. New York* (Nos. 29, 32, 60), and *West Coast Hotel v. Parrish* (Vol. IV, No. 42). In an important dissenting opinion, delivered in 1938 (*Connecticut General Life Insurance Company v. Johnson*), Justice Black held that the word 'person,' in the Amendment, should not be considered to include corporations, but only human beings. If that were to become the established reading of the Court, the scope of the Amendment would be drastically restricted.]

**SEC. 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**SEC. 2.** Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

**SEC. 3.** No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House remove such disability.

**SEC. 4.** The validity of the public debt of the United States authorized by law, including debts incurred for payment of pensions and bounties for services in sup-

pressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

SEC. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

## 9. REPORT OF THE JOINT COMMITTEE ON RECONSTRUCTION, 1866

[The Joint Committee on Reconstruction consisted of fifteen members, of whom twelve were Republicans. In the early months of 1866 they set up four sub-committees which took evidence from a hundred and forty-four witnesses, nearly all of whom were Northern supporters. The majority of twelve issued a report, supported by evidence, which declared that it was quite unsafe to rely on the loyalty of the rebel States, that the Presidential policy of leniency had only led to a revival of insurrectionary feelings, and that adequate guarantees were essential before the States could be received once more into the Union.]

. . . It is the opinion of your committee—

I. That the States lately in rebellion were, at the close of the war, disorganized communities, without civil government, and without constitutions or other forms, by virtue of which political relation could legally exist between them and the Federal Government.

II. That Congress cannot be expected to recognize as valid the election of representatives from disorganized communities, which, from the very nature of the case, were unable to present their claim to representation under those established and recognized rules, the observance of which has been hitherto required.

III. That Congress would not be justified in admitting

such communities to a participation in the government of the country without first providing such constitutional or other guarantees as will tend to secure the civil rights of all citizens of the republic; a just equality of representation; protection against claims founded in rebellion and crime; a temporary restoration of the right of suffrage to those who have not actively participated in the efforts to destroy the Union and overthrow the Government, and the exclusion from position of public trust of, at least, a portion of those whose crimes have proved them to be enemies of the Union, and unworthy of public confidence.

Your committee will, perhaps, hardly be deemed excusable for extending this report further; but inasmuch as immediate and unconditional representation of the States lately in rebellion is demanded as a matter of right, and delay, and even hesitation, is denounced as grossly oppressive and unjust, as well as unwise and impolitic, it may not be amiss again to call attention to a few undisputed and notorious facts, and the principles of public law applicable thereto, in order that the propriety of that claim may be fully considered and well understood.

The State of Tennessee occupies a position distinct from all the other insurrectionary States, and has been the subject of a separate report, which your committee have not thought it expedient to disturb. Whether Congress shall see fit to make that State the subject of separate action, or to include it in the same category with all others, so far as concerns the imposition of preliminary conditions, it is not within the province of this committee either to determine or advise.

To ascertain whether any of the so-called Confederate States 'are entitled to be represented in either House of Congress,' the essential inquiry is, whether there is, in any one of them, a constituency qualified to be represented in Congress. The question how far persons claiming seats in either House possess the credentials necessary to enable them to represent a duly qualified constituency is one for the consideration of each House

separately, after the preliminary question shall have been finally determined.

We now propose to re-state, as briefly as possible, the general facts and principles applicable to all the States recently in rebellion:

First. The seats of the senators and representatives from the so-called Confederate States became vacant in the year 1861, during the second session of the Thirty-sixth Congress, by the voluntary withdrawal of their incumbents, with the sanction and by direction of the legislatures or conventions of their respective States. This was done as a hostile act against the Constitution and Government of the United States, with a declared intent to overthrow the same by forming a southern confederation. This act of declared hostility was speedily followed by an organization of the same States into a confederacy, which levied and waged war, by sea and land, against the United States. This war continued more than four years, within which period the rebel armies besieged the national capital, invaded the loyal States, burned their towns and cities, robbed their citizens, destroyed more than 250,000 loyal soldiers, and imposed an increased national burden of not less than \$3,500,000,000, of which seven or eight hundred millions have already been met and paid. From the time these confederated States thus withdrew their representation in Congress and levied war against the United States, the great mass of their people became and were insurgents, rebels, traitors, and all of them assumed and occupied the political, legal, and practical relation of enemies of the United States. This position is established by Acts of Congress and judicial decisions, and is recognized repeatedly by the President in public proclamations, documents, and speeches.

Second. The States thus confederated prosecuted their war against the United States to final arbitrament, and did not cease until all their armies were captured, their military power destroyed, their civil officers, State and Confederate, taken prisoners or put to flight, every vestige of State and confederate government

obliterated, their territory overrun and occupied by the federal armies, and their people reduced to the condition of enemies conquered in war, entitled only by public law to such rights, privileges, and conditions as might be vouchsafed by the conqueror. This position is also established in judicial decisions, and is recognized by the President in public proclamations, documents, and speeches.

Third. Having voluntarily deprived themselves of representation in Congress for the criminal purpose of destroying the Union, and having reduced themselves, by the act of levying war, to the condition of public enemies, they have no right to complain of temporary exclusion from Congress; but on the contrary having voluntarily renounced the right to representation, and disqualified themselves by crime from participating in the Government, the burden now rests upon them, before claiming to be reinstated in their former condition, to show that they are qualified to resume federal relations. In order to do this, they must prove that they have established, with the consent of the people, republican forms of government in harmony with the Constitution and laws of the United States, that all hostile purposes have ceased, and should give adequate guarantees against future treason and rebellion—guarantees which shall prove satisfactory to the Government against which they rebelled, and by whose arms they were subdued.

Fourth. Having by this treasonable withdrawal from Congress, and by flagrant rebellion and war, forfeited all civil and political rights and privileges under the Federal Constitution, they can only be restored thereto by the permission and authority of that constitutional power against which they rebelled and by which they were subdued.

Fifth. These rebellious enemies were conquered by the people of the United States acting through all the co-ordinate branches of the Government, and not by the executive department alone. The powers of conqueror are not so vested in the President that he can fix and regulate the terms of settlement and confer

congressional representation on conquered rebels and traitors. Nor can he in any way qualify enemies of the Government to exercise its law-making power. The authority to restore rebels to political power in the Federal Government can be exercised only with the concurrence of all the departments in which political power is vested; and hence the several proclamations of the President to the people of the Confederate States cannot be considered as extending beyond the purposes declared, and can only be regarded as provisional permission by the commander-in-chief of the army to do certain acts, the effect and validity whereof is to be determined by the constitutional government, and not solely by the executive power.

Sixth. The question before Congress is, then, whether conquered enemies have the right, and shall be permitted at their own pleasure and on their own terms, to participate in making laws for their conquerors; whether conquered rebels may change their theatre of operations from the battle-field, where they were defeated and overthrown, to the halls of Congress, and, through their representatives, seize upon the Government which they fought to destroy; whether the national treasury, the army of the nation, its navy, its forts and arsenals, its whole civil administration, its credit, its pensioners, the widows and orphans of those who perished in the war, the public honor, peace, and safety, shall all be turned over to the keeping of its recent enemies without delay, and without imposing such conditions as, in the opinion of Congress, the security of the country and its institutions may demand.

Seventh. The history of mankind exhibits no example of such madness and folly. The instinct of self-preservation protests against it. The surrender by Grant to Lee, and by Sherman to Johnston, would have been disasters of less magnitude, for new armies could have been raised, new battles fought, and the Government saved. The anti-coercive policy, which, under pretext of avoiding bloodshed, allowed the rebellion to take form and gather force, would be surpassed in infamy

by the matchless wickedness that would now surrender the halls of Congress to those so recently in rebellion, until proper precautions shall have been taken to secure the national faith and the national safety.

Eighth. As has been shown in this report, and in the evidence submitted, no proof has been afforded to Congress of a constituency in any one of the so-called Confederate States, unless we except the State of Tennessee, qualified to elect senators and representatives in Congress. No State Constitution, or amendment to a State Constitution, has had the sanction of the people. All the so-called legislation of State conventions and legislatures has been had under military dictation. If the President may, at his will and under his own authority, whether as military commander or chief executive, qualify persons to appoint senators and elect representatives, and empower others to appoint and elect them, he thereby practically controls the organization of the legislative department. The constitutional form of government is thereby practically destroyed, and its power absorbed in the Executive. And while your committee do not for a moment impute to the President any such design, but cheerfully concede to him the most patriotic motives, they cannot but look with alarm upon a precedent so fraught with danger to the Republic.

Ninth. The necessity of providing adequate safeguards for the future, before restoring the insurrectionary States to a participation in the direction of public affairs, is apparent from the bitter hostility to the government and people of the United States yet existing throughout the conquered territory as proved incontestably by the testimony of many witnesses and by undisputed facts.

Tenth. The conclusion of your committee therefore is, that the so-called Confederate States are not, at present, entitled to representation in the Congress of the United States; that, before allowing such representation, adequate security for future peace and safety should be required; that this can only be found in such changes of the organic law as shall determine the civil

rights and privileges of all citizens in all parts of the Republic, shall place representation on an equitable basis, shall fix a stigma upon treason, and protect the loyal people against future claims for the expenses incurred in support of rebellion and for manumitted slaves, together with an express grant of power in Congress to enforce those provisions. To this end they offer a joint resolution for amending the Constitution of the United States, and the two several bills designed to carry the same into effect, before referred to. . . .

#### 10. *EX PARTE MILLIGAN*, 1866

[In October 1864 Lambdin P. Milligan, a civilian who had been arrested by order of the General commanding the military district of Indiana, was tried by a military commission on a charge of conspiracy and aiding the rebels, convicted and sentenced to be hanged. On 10 May 1865 he petitioned the Federal Circuit Court in Indiana for a writ of habeas corpus, and the question came before the Supreme Court in March 1866. On 3 April the Court delivered a unanimous decision that the military commission authorized by the President had been unlawful. On 17 December 1866 the Court delivered its opinion in full.

The decision, by condemning military tribunals in areas where the civil courts were open, raised doubts about the legality of the Reconstruction policy of Congress. It is one of the outstanding judgments in the history of the Supreme Court.]

DAVIS, J. The importance of the main question presented by this record cannot be overstated; for it involves the very framework of the Government and the fundamental principles of American liberty.

During the late wicked rebellion, the temper of the times did not allow that calmness in deliberation and discussion so necessary to a correct conclusion of a purely judicial question. *Then*, considerations of safety were mingled with the exercise of power; and feelings and interests prevailed which are happily terminated. *Now*,

that the public safety is assured, this question, as well as all others, can be discussed and decided without passion or the admixture of any element not required to form a legal judgment. We approach the investigation of this case, fully sensible of the magnitude of the inquiry and the necessity of full and cautious deliberation. . . .

The controlling question in the case is this: Upon the *facts* stated in Milligan's petition, and the exhibits filed, had the military commission mentioned in it *jurisdiction*, legally, to try and sentence him? Milligan, not a resident of one of the rebellious States, or a prisoner of war, but a citizen of Indiana for twenty years past, and never in the military or naval service, is, while at his home, arrested by the military power of the United States, imprisoned, and, on certain criminal charges preferred against him, tried, convicted, and sentenced to be hanged by a military commission, organized under the direction of the military commander of the military district of Indiana. Had this tribunal the legal power and authority to try and punish this man?

No graver question was ever considered by this court, nor one which more nearly concerns the rights of the whole people; for it is the birthright of every American citizen when charged with crime, to be tried and punished according to law. The power of punishment is alone through the means which the laws have provided for that purpose, and if they are ineffectual, there is an immunity from punishment no matter how great an offender the individual may be, or how much his crimes may have shocked the sense of justice of the country, or endangered its safety. By the protection of the law human rights are secured; withdraw that protection, and they are at the mercy of wicked rulers, or the clamor of an excited people. If there was law to justify this military trial, it is not our province to interfere; if there was not, it is our duty to declare the nullity of the whole proceedings. The decision of this question does not depend on argument or judicial precedents, numerous and highly illustrative as they are. These precedents inform us of the extent of the struggle

to preserve liberty, and to relieve those in civil life from military trials. The founders of our government were familiar with the history of that struggle, and secured in a written Constitution every right which the people had wrested from power during a contest of ages. By that Constitution and the laws authorized by it this question must be determined. The provisions of that instrument on the administration of criminal justice are too plain and direct to leave room for misconstruction or doubt of their true meaning. Those applicable to this case are found in that clause of the original Constitution which says, 'That the trial of all crimes, except in case of impeachment, shall be by jury'; and in the fourth, fifth, and sixth articles of the amendments. . . .

Time has proven the discernment of our ancestors; for even these provisions, expressed in such plain English words, that it would seem the ingenuity of man could not evade them, are now, after the lapse of more than seventy years, sought to be avoided. Those great and good men foresaw that troublous times would arise, when rulers and people would become restive under restraint, and seek, by sharp and decisive measures, to accomplish ends deemed just and proper, and that the principles of constitutional liberty would be in peril, unless established by irrepealable law. The history of the world had taught them that what was done in the past might be attempted in the future. The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the government, within the Constitution, has all the powers granted to it which are necessary to preserve its existence; as has been happily proved by the result of the great effort to throw off its just authority.

Have any of the rights guaranteed by the Constitution been violated in the case of *Milligan*? And if so, what are they?

Every trial involves the exercise of judicial power; and from what source did the military commission that tried him derive their authority? Certainly no part of the judicial power of the country was conferred on them; because the Constitution expressly vests it 'in one Supreme Court and such inferior courts as the Congress may from time to time ordain and establish,' and it is not pretended that the commission was a court ordained and established by Congress. They cannot justify on the mandate of the President, because he is controlled by law, and has his appropriate sphere of duty, which is to execute, not to make, the laws; and there is 'no unwritten criminal code to which resort can be had as a source of jurisdiction.'

But it is said that the jurisdiction is complete under the 'laws and usages of war.'

It can serve no useful purpose to inquire what those laws and usages are, whence they originated, where found, and on whom they operate; they can never be applied to citizens in States which have upheld the authority of the Government, and where the courts are open and their process unobstructed. This court has judicial knowledge that in Indiana the federal authority was always unopposed, and its courts always open to hear criminal accusations and redress grievances; and no usage of war could sanction a military trial there for any offense whatever of a citizen in civil life, in nowise connected with the military service. Congress could grant no such power; and to the honor of our national legislature be it said, it has never been provoked by the state of the country even to attempt its exercise. One of the plainest constitutional provisions was, therefore, infringed when *Milligan* was tried by a court not ordained and established by Congress, and not composed of judges appointed during good behavior.

Why was he not delivered to the Circuit Court of Indiana to be proceeded against according to law? No

reason of necessity could be urged against it; because Congress had declared penalties against the offences charged, provided for their punishment, and directed that court to hear and determine them. And soon after this military tribunal was ended, the Circuit Court met, peacefully transacted its business, and adjourned. It needed no bayonets to protect it, and required no military aid to execute its judgments. It was held in a State, eminently distinguished for patriotism, by judges commissioned during the rebellion who were provided with juries, upright, intelligent, and selected by a marshal appointed by the President. The Government had no right to conclude that *Milligan*, if guilty, would not receive in that court merited punishment; for its records disclose that it was constantly engaged in the trial of similar offenses, and was never interrupted in its administration of criminal justice. If it was dangerous, in the distracted condition of affairs, to leave *Milligan* unrestrained of his liberty, because he 'conspired against the Government, afforded aid and comfort to rebels, and incited the people to insurrection,' the law said, arrest him, confine him closely, render him powerless to do further mischief; and then present his case to the grand jury of the district, with proofs of his guilt, and, if indicted, try him according to the course of the common law. If this had been done, the Constitution would have been vindicated, the law of 1863 enforced, and the securities for personal liberty preserved and defended.

Another guarantee of freedom was broken when *Milligan* was denied a trial by jury. The great minds of the country have differed on the correct interpretation to be given to the various provisions of the Federal Constitution; and judicial decision has been often invoked to settle their true meaning; but until recently no one ever doubted that the right of trial by jury was forfeited in the organic law against the power of attack. It is now assailed; but if ideas can be expressed in words, and language has any meaning, this right—one of the most valuable in a free country—is preserved to every one accused of crime who is not attached to the

army, or navy, or militia in actual service . . . When peace prevails, and the authority of the Government is undisputed, there is no difficulty of preserving the safeguards of liberty; for the ordinary modes of trial are never neglected, and no one wishes it otherwise. But if society is disturbed by civil commotion—if the passions of men are aroused and the restraints of law weakened, if not disregarded—these safeguards need, and should receive, the watchful care of those entrusted with the guardianship of the Constitution and laws. In no other way can we transmit to posterity unimpaired the blessings of liberty, consecrated by the sacrifices of the Revolution.

It is claimed that martial law covers with its broad mantle the proceedings of this military commission. The proposition is this: that in a time of war the commander of an armed force (if, in his opinion, the exigencies of the country demand it, and of which he is to judge) has the power, within the lines of his military district, to suspend all civil rights and their remedies, and subject citizens as well as soldiers to the rule of *his will*; and in the exercise of his lawful authority cannot be restrained, except by his superior officer or the President of the United States.

If this position is sound to the extent claimed, then when war exists, foreign or domestic, and the country is subdivided into military departments for mere convenience, the commander of one of them can, if he chooses, within his limits, on the plea of necessity, with the approval of the Executive, substitute military force for, and to the exclusion of, the laws, and punish all persons, as he thinks right and proper, without fixed or certain rules.

The statement of this proposition shows its importance; for, if true, republican government is a failure, and there is an end of liberty regulated by law. Martial law, established on such a basis, destroys every guarantee of the Constitution, and effectually renders the 'military independent of, and superior to, the civil power'—the attempt to do which by the king of Great

Britain was deemed by our fathers such an offense, that they assigned it to the world as one of the causes which impelled them to declare their independence. Civil liberty and this kind of martial law cannot endure together; the antagonism is irreconcilable; and, in the conflict, one or the other must perish.

This nation, as experience has proved, cannot always remain at peace, and has no right to expect that it will always have wise and humane rulers, sincerely attached to the principles of the Constitution. Wicked men, ambitious of power, with hatred of liberty and contempt of law, may fill the place once occupied by Washington and Lincoln; and if this right is conceded, and the calamities of war again befall us, the dangers to human liberty are frightful to contemplate. If our fathers had failed to provide for just such a contingency, they would have been false to the trust reposed in them. They knew—the history of the world told them—the nation they were founding, be its existence short or long, would be involved in war; how often or how long continued, human foresight could not tell; and that unlimited power, wherever lodged at such a time, was especially hazardous to freemen. For this, and other equally weighty reasons, they secured the inheritance they had fought to maintain, by incorporating in a written Constitution the safeguards which time had proved were essential to its preservation. Not one of these safeguards can the President, or Congress, or the judiciary disturb, except the one concerning the writ of habeas corpus.

It is essential to the safety of every government that, in a great crisis like the one we have just passed through, there should be a power somewhere of suspending the writ of habeas corpus. In every war there are men of previously good character, wicked enough to counsel their fellow-citizens to resist the measures deemed necessary by a good government to sustain its just authority and overthrow its enemies; and their influence may lead to dangerous combinations. In the emergency of the times, an immediate public investigation according to law may not be possible; and yet the peril to the

country may be too imminent to suffer such persons to go at large. Unquestionably, there is then an exigency which demands that the government, if it should see fit, in the exercise of a proper discretion, to make arrests, should not be required to produce the persons arrested in answer to a writ of habeas corpus. The Constitution goes no further. It does not say after a writ of habeas corpus is denied a citizen, that he shall be tried otherwise than by the course of the common law; if it had intended this result, it was easy by the use of direct words to have accomplished it. The illustrious men who framed that instrument were guarding the foundations of civil liberty against the abuses of unlimited power; they were full of wisdom, and the lessons of history informed them that a trial by an established court, assisted by an impartial jury, was the only sure way of protecting the citizen against oppression and wrong. Knowing this, they limited the suspension to one great right, and left the rest to remain forever inviolable. But, it is insisted that the safety of the country in time of war demands that this broad claim for martial law shall be sustained. If this were true, it could be well said that a country, preserved at the sacrifice of all the cardinal principles of liberty, is not worth the cost of preservation. Happily, it is not so.

It will be borne in mind that this is not a question of the power to proclaim martial law when war exists in a community and the courts and civil authorities are overthrown. Nor is it a question what rule a military commander, at the head of his army, can impose on States in rebellion to cripple their resources and quell the insurrection. The jurisdiction claimed is much more extensive. The necessities of the service, during the late rebellion, required that the loyal States should be placed within the limits of certain military districts and commanders appointed in them; and, it is urged, that this, in a military sense, constituted them the theatre of military operations; and, as in this case, Indiana had been and was again threatened with invasion by the enemy, the occasion was furnished to establish martial

law. The conclusion does not follow from the premises. If armies were collected in Indiana, they were to be employed in another locality, where the laws were obstructed and the national authority disputed. On her soil there was no hostile foot; if once invaded, that invasion was at an end, and with it all pretext for martial law. Martial law cannot arise from a *threatened* invasion. The necessity must be actual and present; the invasion real, such as effectually closes the courts and deposes the civil administration.

It is difficult to see how the safety of the country required martial law in Indiana. If any of her citizens were plotting treason, the power of arrest could secure them, until the Government was prepared for their trial, when the courts were open and ready to try them. It was as easy to protect witnesses before a civil as a military tribunal; and as there could be no wish to convict, except on sufficient legal evidence, surely an ordained and established court was better able to judge of this than a military tribunal composed of gentlemen not trained to the profession of the law.

It follows, from what has been said on this subject, that there are occasions when martial rule can be properly applied. If, in foreign invasion or civil war, the courts are actually closed, and it is impossible to administer criminal justice according to law, *then*, on the theatre of active military operations, where war really prevails, there is a necessity to furnish a substitute for the civil authority, thus overthrown, to preserve the safety of the army and society; and as no power is left but the military, it is allowed to govern by martial rule until the laws can have their free course. As necessity creates the rule, so it limits its duration; for, if this government is continued *after* the courts are reinstated, it is a gross usurpation of power. Martial rule can never exist where the courts are open, and in the proper and unobstructed exercise of their jurisdiction. It is also confined to the locality of actual war. Because, during the late rebellion it could have been enforced in Virginia, where the national authority was overturned and the

courts driven out, it does not follow that it should obtain in Indiana, where that authority was never disputed, and justice was always administered. . . .

## II. THE FIRST RECONSTRUCTION ACT, 1867

[On 3 January 1867 Senator Thaddeus Stevens, one of the leaders of the Radical Republicans, proposed a Bill which was finally to destroy the Presidential policy of Reconstruction and to set up governments in the Southern States based on the votes of the negroes and loyal whites. The Bill was referred to the Joint Committee on Reconstruction, and was returned to the House of Representatives on 6 February. The Bill divided the rebel States into five military districts, laid down the means whereby they were to be governed until new State governments were established, and decided how these governments were to be set up. The Senate concurred with two important amendments, that the power of appointing the military governors should rest with the President and not with the General of the Armies, and that, when Congress had approved the Constitution of any State, which conferred representation according to the Fourteenth Amendment, the remaining sections of the Bill should become inoperative. The House eventually accepted these amendments. Johnson vetoed the Bill on 2 March 1867, and it was passed over his veto by both Houses on the same day.

The plan for restoring the rebel States may be briefly summarized as follows: first, an election to a constitutional convention for which the suffrage should be open to all adult males of whatever race or colour, except those disfranchised for participation in the rebellion; second, the adoption by the convention of a constitution granting the vote to all of whatever race or colour, except to the ex-Confederates; third, the acceptance of this constitution by Congress; fourth, the election of a governor and legislature under this new constitution and the ratification of the Fourteenth Amendment; and, finally, the ratification of that Amendment by the necessary number of States for it to become part of the Constitution of the United States, when the new States would be readmitted to the Union.]

*An Act to provide for the more efficient Government  
of the Rebel States*

Whereas no legal State governments or adequate protection for life or property now exists in the rebel States of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas, and Arkansas; and whereas it is necessary that peace and good order should be enforced in said States until loyal and republican State governments can be legally established: Therefore,

*Be it enacted*, That said rebel States shall be divided into military districts and made subject to the military authority of the United States as hereinafter prescribed, and for that purpose Virginia shall constitute the first district; North Carolina and South Carolina the second district; Georgia, Alabama, and Florida the third district; Mississippi and Arkansas the fourth district; and Louisiana and Texas the fifth district.

SEC. 2. That it shall be the duty of the President to assign to the command of each of said districts an officer of the army, not below the rank of brigadier-general, and to detail a sufficient military force to enable such officer to perform his duties and enforce his authority within the district to which he is assigned.

SEC. 3. That it shall be the duty of each officer assigned as aforesaid, to protect all persons in their rights of persons and property, to suppress insurrection, disorder, and violence, and to punish, or cause to be punished, all disturbers of the public peace and criminals; and to this end he may allow local civil tribunals to take jurisdiction of and to try offenders, or, when in his judgment it may be necessary for the trial of offenders, he shall have power to organize military commissions or tribunals for that purpose, and all interference under color of State authority with the exercise of military authority under this Act, shall be null and void.

SEC. 4. That all persons put under military arrest by virtue of this Act shall be tried without unnecessary delay, and no cruel or unusual punishment shall be

inflicted, and no sentence of any military commission or tribunal hereby authorized, affecting the life or liberty of any person, shall be executed until it is approved by the officer in command of the district, and the laws and regulations for the government of the army shall not be affected by this Act, except in so far as they conflict with its provisions: *Provided*, That no sentence of death under the provisions of this Act shall be carried into effect without the approval of the President.

SEC. 5. That when the people of any one of said rebel States shall have formed a constitution of government in conformity with the Constitution of the United States in all respects, framed by a convention of delegates elected by the male citizens of said State, twenty-one years old and upward, of whatever race, color, or previous condition, who have been resident in said State for one year previous to the day of such election, except such as may be disfranchised for participation in the rebellion or for felony at common law, and when such constitution shall provide that the elective franchise shall be enjoyed by all such persons as have the qualifications herein stated for electors of delegates, and when such constitution shall be ratified by a majority of the persons voting on the question of ratification who are qualified as electors for delegates, and when such constitution shall have been submitted to Congress for examination and approval, and Congress shall have approved the same, and when said State, by a vote of its legislature elected under said constitution, shall have adopted the amendment to the Constitution of the United States, proposed by the Thirty-ninth Congress, and known as article fourteen, and when said article shall have become a part of the Constitution of the United States, said State shall be declared entitled to representation in Congress, and senators and representatives shall be admitted therefrom on their taking the oath prescribed by law, and then and thereafter the preceding sections of this Act shall be inoperative in said State: *Provided*, That no person excluded from the privilege of holding office by said proposed amend-

ment to the Constitution of the United States, shall be eligible to election as a member of the convention to frame a constitution for any of said rebel States, nor shall any such person vote for members of such convention.

SEC. 6. That, until the people of said rebel States shall be by law admitted to representation in the Congress of the United States, any civil governments which may exist therein shall be deemed provisional only, and in all respects subject to the paramount authority of the United States at any time to abolish, modify, control, or supersede the same; and in all elections to any office under such provisional governments all persons shall be entitled to vote, and none others, who are entitled to vote, under the provisions of the fifth section of this Act; and no persons shall be eligible to any office under any such provisional governments who would be disqualified from holding office under the provisions of the third *article* of said constitutional amendment.

## 12. JOHNSON'S VETO OF THE FIRST RECONSTRUCTION ACT, 1867

[Johnson vetoed the Reconstruction Bill on the grounds that it was unconstitutional in overriding the rights of individuals and the States under the Federal Constitution, and that it was a breach of trust, as Congress had declared in 1861 that the war was fought not to subjugate the South, but to enforce the Constitution and the laws.]

WASHINGTON, 2 March 1867.

*To the House of Representatives:*

I have examined the bill 'to provide for the more efficient government of the rebel States' with the care and anxiety which its transcendent importance is

calculated to awaken. I am unable to give it my assent, for reasons so grave that I hope a statement of them may have some influence on the minds of the patriotic and enlightened men with whom the decision must ultimately rest.

The bill places all the people of the ten States therein named under the absolute domination of military rulers; and the preamble undertakes to give the reason upon which the measure is based and the ground upon which it is justified. It declares that there exists in those States no legal governments and no adequate protection for life or property, and asserts the necessity of enforcing peace and good order within their limits. Is this true as matter of fact?

It is not denied that the States in question have each of them an actual government, with all the powers—executive, judicial, and legislative—which properly belong to a free State. They are organized like the other States of the Union, and, like them, they make, administer, and execute the laws which concern their domestic affairs. An existing *de facto* government, exercising such functions as these, is itself the law of the State upon all matters within its jurisdiction. To pronounce the supreme law-making power of an established State illegal is to say that law itself is unlawful.

The provisions which these governments have made for the preservation of order, the suppression of crime, and the redress of private injuries are in substance and principle the same as those which prevail in the Northern States and in other civilized countries. They certainly have not succeeded in preventing the commission of all crime, nor has this been accomplished anywhere in the world. There, as well as elsewhere, offenders sometimes escape for want of vigorous prosecution, and occasionally, perhaps, by the inefficiency of courts or the prejudice of jurors. It is undoubtedly true that these evils have been much increased and aggravated, North and South, by the demoralizing influences of civil war and by the rancorous passions

which the contest has engendered. But that these people are maintaining local governments for themselves which habitually defeat the object of all government and render their own lives and property insecure is in itself utterly improbable, and the averment of the bill to that effect is not supported by any evidence that has come to my knowledge. All the information I have on the subject convinces me that the masses of the Southern people and those who control their public acts, while they entertain diverse opinions on questions of Federal policy, are completely united in the effort to reorganize their society on the basis of peace and to restore their mutual prosperity as rapidly and as completely as their circumstances will permit.

The bill, however, would seem to show upon its face that the establishment of peace and good order is not its real object. The fifth section declares that the preceding sections shall cease to operate in any State where certain events shall have happened. . . .

All these conditions must be fulfilled before the people of any of these States can be relieved from the bondage of military domination; but when they are fulfilled, then immediately the pains and penalties of the bill are to cease, no matter whether there be peace and order or not, and without any reference to the security of life or property. The excuse given for the bill in the preamble is admitted by the bill itself not to be real. The military rule which it establishes is plainly to be used, not for any purpose of order or for the prevention of crime, but solely as a means of coercing the people into the adoption of principles and measures to which it is known that they are opposed, and upon which they have an undeniable right to exercise their own judgment.

I submit to Congress whether this measure is not in its whole character, scope, and object without precedent and without authority, in palpable conflict with the plainest provisions of the Constitution, and utterly destructive to those great principles of liberty and humanity for which our ancestors on both sides of the

Atlantic have shed so much blood and expended so much treasure.

The ten States named in the bill are divided into five districts. For each district an officer of the Army, not below the rank of a brigadier-general, is to be appointed to rule over the people; and he is to be supported with an efficient military force to enable him to perform his duties and enforce his authority. Those duties and that authority, as defined by the third section of the bill, are 'to protect all persons in their rights of person and property, to suppress insurrection, disorder, and violence, and to punish or cause to be punished all disturbers of the public peace or criminals.' The power thus given to the commanding officer over all the people of each district is that of an absolute monarch. His mere will is to take the place of all law. The law of the States is now the only rule applicable to the subjects placed under his control, and that is completely displaced by the clause which declares all interference of State authority to be null and void. He alone is permitted to determine what are rights of person or property, and he may protect them in such way as in his discretion may seem proper. It places at his free disposal all the lands and goods in his district, and he may distribute them without let or hindrance to whom he pleases. Being bound by no State law, and there being no other law to regulate the subject, he may make a criminal code of his own; and he can make it as bloody as any recorded in history, or he can reserve the privilege of acting upon the impulse of his private passions in each case that arises. He is bound by no rules of evidence; there is, indeed, no provision by which he is authorized or required to take any evidence at all. Everything is a crime which he chooses to call so, and all persons are condemned whom he pronounces to be guilty. He is not bound to keep and record or make any report of his proceedings. He may arrest his victims wherever he finds them, without warrant, accusation, or proof of probable cause. If he gives them a trial before he

inflicts the punishment, he gives it of his grace and mercy, not because he is commanded so to do. . . .

It is plain that the authority here given to the military officer amounts to absolute despotism. But to make it still more unendurable, the bill provides that it may be delegated to as many subordinates as he chooses to appoint, for it declares that he shall 'punish or cause to be punished.' Such a power has not been wielded by any monarch in England for more than five hundred years. In all that time no people who speak the English language have borne such servitude. It reduces the whole population of the ten States—all persons, of every color, sex, and condition, and every stranger within their limits—to the most abject and degrading slavery. No master ever had a control so absolute over the slaves as this bill gives to the military officers over both white and colored persons. . . .

I come now to a question which is, if possible, still more important. Have we the power to establish and carry into execution a measure like this? I answer, Certainly not, if we derive our authority from the Constitution and if we are bound by the limitations which it imposes.

This proposition is perfectly clear, that no branch of the Federal Government—executive, legislative, or judicial—can have any just powers except those which it derives through and exercises under the organic law of the Union. Outside of the Constitution we have no legal authority more than private citizens, and within it we have only so much as that instrument gives us. This broad principle limits all our functions and applies to all subjects. It protects not only the citizens of States which are within the Union, but it shields every human being who comes or is brought under our jurisdiction. We have no right to do in one place more than in another that which the Constitution says we shall not do at all. If, therefore, the Southern States were in truth out of the Union, we could not treat their people in a way which the fundamental law forbids.

Some persons assume that the success of our arms in crushing the opposition which was made in some of the States to the execution of the Federal laws reduced those States and all their people—the innocent as well as the guilty—to the condition of vassalage and gave us a power over them which the Constitution does not bestow or define or limit. No fallacy can be more transparent than this. Our victories subjected the insurgents to legal obedience, not to the yoke of an arbitrary despotism. When an absolute sovereign reduces his rebellious subjects, he may deal with them according to his pleasure, because he had that power before. But when a limited monarch puts down an insurrection, he must still govern according to law. If an insurrection should take place in one of our States against the authority of the State government and end in the overthrow of those who planned it, would that take away the rights of all the people of the counties where it was favored by a part or a majority of the population? Could they for such a reason be wholly outlawed and deprived of their representation in the legislature? I have always contended that the Government of the United States was sovereign within its constitutional sphere; that it executed its laws, like the States themselves, by applying its coercive power directly to individuals, and that it could put down insurrection with the same effect as a State and no other. The opposite doctrine is the worst heresy of those who advocated secession, and cannot be agreed to without admitting that heresy to be right.

Invasion, insurrection, rebellion, and domestic violence were anticipated when the Government was framed, and the means of repelling and suppressing them were wisely provided for in the Constitution; but it was not thought necessary to declare that the States in which they might occur should be expelled from the Union. Rebellions, which were invariably suppressed, occurred prior to that out of which these questions grow; but the States continued to exist and the Union remained unbroken. In Massachusetts, in Pennsylvania, in

Rhode Island, and in New York, at different periods in our history, violent and armed opposition to the United States was carried on; but the relations of those States with the Federal Government were not supposed to be interrupted or changed thereby after the rebellious portions of their population were defeated and put down. It is true that in these earlier cases there was no formal expression of a determination to withdraw from the Union, but it is also true that in the Southern States the ordinances of secession were treated by all the friends of the Unions as mere nullities and are now acknowledged to be so by the States themselves. If we admit that they had any force or validity or that they did in fact take the States in which they were passed out of the Union, we sweep from under our feet all the grounds upon which we stand in justifying the use of Federal force to maintain the integrity of the Government.

This is a bill passed by Congress in time of peace. There is not in any one of the States brought under its operation either war or insurrection. The laws of the States and of the Federal Government are all in undisturbed and harmonious operation. The courts, State and Federal, are open and in the full exercise of their proper authority. Over every State comprised in these five military districts, life, liberty, and property are secured by State laws and Federal laws, and the National Constitution is everywhere in force and everywhere obeyed. What, then, is the ground on which this bill proceeds? The title of the bill announces that it is intended 'for the more efficient government' of these ten States. It is recited by way of preamble that no legal State governments 'nor adequate protection for life or property' exist in those States, and that peace and good order should be thus enforced. The first thing which arrests attention upon these recitals, which prepare the way for martial law, is this, that the only foundation upon which martial law can exist under our form of government is not stated or so much as pretended. Actual war, foreign invasion, domestic insurrection—

none of these appear; and none of these, in fact, exist. It is not even recited that any sort of war or insurrection is threatened. . . .

I need not say to the representatives of the American people that their Constitution forbids the exercise of judicial power in any way but one—that is, by the ordained and established courts. It is equally well known that in all criminal cases a trial by jury is made indispensable by the express words of that instrument. I will not enlarge on the inestimable value of the right thus secured to every freeman or speak of the danger to public liberty in all parts of the country which must ensue from a denial of it anywhere or upon any pretense. A very recent decision of the Supreme Court has traced the history, vindicated the dignity, and made known the value of this great privilege so clearly that nothing more is needed. To what extent a violation of it might be excused in time of war or public danger may admit of discussion, but we are providing now for a time of profound peace, when there is not an armed soldier within our borders except those who are in the service of the Government. It is in such a condition of things that an Act of Congress is proposed which, if carried out, would deny a trial by the lawful courts and juries to 9,000,000 American citizens and to their posterity for an indefinite period. It seems to be scarcely possible that anyone should seriously believe this consistent with a Constitution which declares in simple, plain, and unambiguous language that all persons shall have that right and that no person shall ever in any case be deprived of it. The Constitution also forbids the arrest of the citizen without judicial warrant, founded on probable cause. This bill authorizes an arrest without warrant, at the pleasure of a military commander. The Constitution declares that 'no person shall be held to answer for a capital or otherwise infamous crime unless on presentment by a grand jury.' This bill holds every person not a soldier answerable for all crimes and all charges without any presentment. The Constitution declares that 'no person shall be deprived

of life, liberty, or property without due process of law.' This bill sets aside all process of law, and makes the citizen answerable in his person and property to the will of one man, and as to his life to the will of two. Finally, the Constitution declares that 'the privilege of the writ of *habeas corpus* shall not be suspended unless when, in case of rebellion or invasion, the public safety may require it'; whereas this bill declares martial law (which of itself suspends this great writ) in time of peace, and authorizes the military to make the arrest, and gives to the prisoner only one privilege, and that is a trial 'without unnecessary delay.' He has no hope of release from custody, except the hope, such as it is, of release by acquittal before a military commission.

The United States are bound to guarantee to each State a republican form of government. Can it be pretended that this obligation is not probably broken if we carry out a measure like this, which wipes away every vestige of republican government in ten States and puts the life, property, liberty, and honor of all the people in each of them under the domination of a single person clothed with unlimited authority? . . .

The purpose and object of the bill—the general intent which pervades it from beginning to end—is to change the entire structure and character of the State governments and to compel them by force to the adoption of organic laws and regulations which they are unwilling to accept if left to themselves. The negroes have not asked for the privilege of voting; the vast majority of them have no idea what it means. This bill not only thrusts it into their hands, but compels them, as well as the whites, to use it in a particular way. If they do not form a constitution with prescribed articles in it and afterwards elect a legislature which will act upon certain measures in a prescribed way, neither blacks nor whites can be relieved from the slavery which the bill imposes upon them. Without pausing here to consider the policy or impolicy of Africanizing the southern part of our territory, I would simply ask the attention of Congress to that ~~manifest~~,

well-known, and universally acknowledged rule of constitutional law which declares that the Federal Government has no jurisdiction, authority, or power to regulate such subjects for any State. To force the right of suffrage out of the hands of the white people and into the hands of the negroes is an arbitrary violation of this principle. . . .

It is a part of our public history which can never be forgotten that both Houses of Congress, in July 1861, declared in the form of a solemn resolution that the war was and should be carried on for no purpose of subjugation, but solely to enforce the Constitution and laws, and that when this was yielded by the parties in rebellion the contest should cease, with the constitutional rights of the States and of individuals unimpaired. This resolution was adopted and sent forth to the world unanimously by the Senate and with only two dissenting voices in the House. It was accepted by the friends of the Union in the South as well as in the North as expressing honestly and truly the object of the war. On the faith of it many thousands of persons in both sections gave their lives and their fortunes to the cause. To repudiate it now by refusing to the States and to the individuals within them the rights which the Constitution and laws of the Union would secure to them is a breach of our plighted honor for which I can imagine no excuse and to which I cannot voluntarily become a party. . . .

ANDREW JOHNSON.

### 13. THE TENURE OF OFFICE ACT, 1867

[The Congressional plan of Reconstruction, if it were to be carried into full effect, entailed a drastic curtailment of the power of the President. On 2 March 1867 the Tenure of Office Act was passed, making necessary the advice and consent of the Senate for all removals from office of those appointed with the approval of the Senate. The chief

officers of the Cabinet could only be removed, except with the approval of the Senate, during the term of the President by whom they were appointed and for one month after.

The whole question of the right of the President to remove from office those appointed with the consent of the Senate was a doubtful one. It depended on a resolution of the Senate in the earliest days of the Republic. The Act was repealed in 1887 and the Supreme Court upheld the President's power in the case of *Myers v. United States* in 1926.

The wording of section 1 of the Act was most obscure. Johnson, wishing to have the Act tested in the courts, removed from office Stanton, the Secretary of War, who had been appointed by President Lincoln. The Senate resolved that this was a breach of the Act, and the incident formed one of the main charges in the impeachment of Johnson (see No. 18).]

*An Act regulating the Tenure of certain Civil Offices*

*Be it enacted*, That every person holding any civil office to which he has been appointed by and with the advice and consent of the Senate, and every person who shall hereafter be appointed to any such office, and shall become duly qualified to act therein is, and shall be entitled to hold such office until a successor shall have been in like manner appointed and duly qualified, except as herein otherwise provided: *Provided*, That the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster-General, and the Attorney-General, shall hold their offices respectively for and during the term of the President by whom they may have been appointed and for one month thereafter, subject to removal by and with the advice and consent of the Senate.

SEC. 2. That when any officer appointed as aforesaid, excepting judges of the United States courts, shall, during a recess of the Senate, be shown, by evidence satisfactory to the President, to be guilty of misconduct in office, or crime, or for any reason shall become incapable or legally disqualified to perform its duties, in such case, and in no other, the President may suspend such officer and designate some suitable person to perform tem-

porarily the duties of such office until the next meeting of the Senate, and until the case shall be acted upon by the Senate . . . ; and in such case it shall be the duty of the President, within twenty days after the first day of such next meeting of the Senate, to report to the Senate such suspension, with the evidence and reasons for his action in the case, and the name of the person so designated to perform the duties of such office. And if the Senate shall concur in such suspension and advise and consent to the removal of such officer, they shall so certify to the President, who may thereupon remove such officer, and, by and with the advice and consent of the Senate, appoint another person to such office. But if the Senate shall refuse to concur in such suspension, such officer so suspended shall forthwith resume the functions of his office, and the powers of the person so performing its duties in his stead shall cease, and the official salary and emoluments of such officer shall, during such suspension, belong to the person so performing the duties thereof, and not to the officer so suspended. . . .

SEC. 3. That the President shall have power to fill all vacancies which may happen during the recess of the Senate, by reason of death or resignation, by granting commissions which shall expire at the end of their next session thereafter. . . .

SEC. 4. That nothing in this Act contained shall be construed to extend the term of any office the duration of which is limited by law.

SEC. 5. That if any person shall, contrary to the provisions of this Act, accept any appointment to or employment in any office, or shall hold or exercise or attempt to hold or exercise, any such office or employment, he shall be deemed, and is hereby declared to be, guilty of a high misdemeanor, and, upon trial and conviction thereof, he shall be punished therefor by a fine not exceeding ten thousand dollars, or by imprisonment not exceeding five years, or both said punishments, in the discretion of the court.

SEC. 6. That every removal, appointment, or employ-

ment, made, had, or exercised, contrary to the provisions of this Act, . . . shall be deemed, and are hereby declared to be, high misdemeanors, and, upon trial and conviction thereof, every person guilty thereof shall be punished by a fine not exceeding ten thousand dollars, or by imprisonment not exceeding five years, or both said punishments, in the discretion of the court. . . .

#### 14. THE SECOND RECONSTRUCTION ACT, 1867

[After the passing of the Reconstruction Act the rebel States showed themselves unready to go through the process there laid down for them. Congress, therefore, passed on 23 March 1867 a supplemental Act, which gave to the military commanders the responsibility of calling the constitutional conventions in the States and carrying out further steps of Reconstruction. The Bill was vetoed by Johnson, but passed over his veto.]

*An Act supplementary to an Act entitled 'An Act to provide for the more efficient Government of the Rebel States,' passed 2 March 1867, and to facilitate Restoration.*

*Be it enacted . . . , That before 1 September 1867 the commanding general in each district defined by . . . [the Act of 2 March 1867] . . . , shall cause a registration to be made of the male citizens of the United States, twenty-one years of age and upwards, resident in each county or parish in the State or States included in his district, which registration shall include only those persons who are qualified to vote for delegates by the Act aforesaid, and who shall have taken and subscribed the following oath or affirmation: 'I, ——, do solemnly swear (or affirm), in the presence of Almighty God, that I am a citizen of the State of ——; that I have resided*

in said State for — months next preceding this day, and now reside in the county of —, or the parish of —, in said State (as the case may be); that I am twenty-one years old; that I have not been disfranchised for participation in any rebellion or civil war against the United States, or for felony committed against the laws of any State or of the United States; that I have never been a member of any State legislature, nor held any executive or judicial office in any State, and afterwards engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that I have never taken an oath as a member of Congress of the United States, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, and afterwards engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that I will faithfully support the Constitution and obey the laws of the United States, and will, to the best of my ability, encourage others so to do, so help me God,' which oath or affirmation may be administered by any registering officer.

SEC. 2. That after the completion of the registration hereby provided for in any State, at such time and places therein as the commanding general shall appoint and direct, of which at least thirty days' public notice shall be given, an election shall be held of delegates to a convention for the purpose of establishing a constitution and civil government for such State loyal to the Union, said convention in each State, except Virginia, to consist of the same number of members as the most numerous branch of the State legislature of such State in the year 1860 to be apportioned among the several districts, counties, or parishes of such State by the commanding general, giving to each representation in the ration of voters registered as aforesaid as nearly as may be. The convention in Virginia shall consist of the same number of members as represented the territory now constituting Virginia in the most numerous branch of the legislature

of said State in the year 1860 to be apportioned as aforesaid.

SEC. 3. That at said election the registered voters of each State shall vote for or against a convention to form a constitution therefor under this Act. . . . And the commanding general . . . shall ascertain and declare the total vote in each State for and against a convention. If a majority of the votes given on that question shall be for a convention, then such convention shall be held as hereinafter provided; but if a majority of said votes shall be against a convention, then no such convention shall be held under this Act: *Provided*, That such convention shall not be held unless a majority of all such registered voters shall have voted on the question of holding such convention.

SEC. 4. That the commanding general of each district shall appoint as many boards of registration as may be necessary, consisting of three loyal officers or persons, to make and complete the registration, superintend the election, and make return to him of the votes, lists of voters, and of the persons elected as delegates by a plurality of the votes cast at said election; and upon receiving said returns he shall open the same, ascertain the persons elected as delegates, according to the returns of the officers who conducted said election, and make proclamation thereof; and if a majority of the votes given on that question shall be for a convention, the commanding general, within sixty days from the date of election, shall notify the delegates to assemble in convention, at a time and place to be mentioned in the notification, and said convention, when organized, shall proceed to frame a constitution and civil government according to the provisions of this Act, and the Act to which it is supplementary; and when the same shall have been so framed, said constitution shall be submitted by the convention for ratification to the persons registered under the provisions of this Act at an election to be conducted by the officers or persons appointed or to be appointed by the commanding general, as hereinbefore provided, and to be held after the expiration of thirty

days from the date of notice thereof, to be given by said convention; and the returns thereof shall be made to the commanding general of the district.

SEC. 5. That if, according to said returns, the constitution shall be ratified by a majority of the votes of the registered electors . . . at least one-half of all the registered voters voting upon the question of such ratification, the president of the convention shall transmit a copy of the same, duly certified, to the President of the United States, who shall forthwith transmit the same to Congress if then in session, and if not in session, then immediately upon its next assembly; and if it shall moreover appear to Congress that the election was one at which all the registered and qualified electors in the State had an opportunity to vote freely and without restraint, fear, or the influence of fraud, and if the Congress shall be satisfied that such constitution meets the approval of a majority of all the qualified electors in the State, and if the said constitution shall be declared by Congress to be in conformity with the provisions of the Act to which this is supplementary, and the other provisions of said Act shall have been complied with, and the said constitution shall be approved by Congress, the State shall be declared entitled to representation, and senators and representatives shall be admitted therefrom as therein provided. . . .

## 15. THE ALASKA TREATY, 1867

[The Russians first settled in North America at Kodiak Island in 1787. In 1821 Alexander I issued a ukase extending Russian territory in Alaska to the fifty-first degree of latitude. In 1824 agreement was reached on the fishing rights of the two Powers on the Alaska coast. In 1867 Seward, the Secretary of State, negotiated the sale of Alaska to the United States. The Treaty was signed on 30 March 1867 and the territory transferred on 18 October. The House of

Representatives attempted to secure the right of giving its consent to all treaties which entailed the appropriation of money, but the Senate refused to concur and the claim was dropped.]

*Convention for the Cession of the Russian Possessions in North America to the United States.*

ART. I. His Majesty the Emperor of all the Russias agrees to cede to the United States, by this Convention, immediately upon the exchange of the ratifications thereof, all the territory and dominion now possessed by his said Majesty on the continent of America and in the adjacent islands, the same being contained within the geographical limits herein set forth, to wit: The eastern limit is the line of demarcation between the Russian and the British possessions in North America, as established by the convention between Russia and Great Britain, of February 28-16, 1825, and described in Articles III and IV of said convention, in the following terms: . . .

‘IV. With reference to the line of demarcation laid down in the preceding article, it is understood—

‘1st. That the island called Prince of Wales Island shall belong wholly to Russia’ (now, by this cession, to the United States).

‘2nd. That whenever the summit of the mountains which extend in a direction parallel to the coast from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude shall prove to be at the distance of more than ten marine leagues from the ocean, the limit between the British possessions and the line of coast which is to belong to Russia as above mentioned (that is to say, the limit to the possessions ceded by this convention) shall be formed by a line parallel to the winding of the coast, and which shall never exceed the distance of ten marine leagues therefrom.’ . . .

ART. II. . . . In the cession of territory and dominion made by the preceding article are included the right

of property in all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices which are not private individual property. It is, however, understood and agreed, that the churches which have been built in the ceded territory by the Russian Government, shall remain the property of such members of the Greek Oriental Church resident in the territory as may choose to worship therein. . . .

ART. III. The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but, if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may from time to time adopt in regard to aboriginal tribes of that country. . . .

ART. VI. In consideration of the cession aforesaid, the United States agree to pay at the Treasury in Washington . . . seven million two hundred thousand dollars in gold. . . .

## 16. MISSISSIPPI *v. JOHNSON, 1867*

[On 5 April 1867 the State of Mississippi brought an action before the Supreme Court to restrain the President and his officers, in particular General Ord, the military commander of the district, from carrying out the two Reconstruction Acts. On 15 April the Court held that, as the actions concerned in the case were not ministerial and required executive discretion, they had 'no jurisdiction of a bill to enjoin the President in the performance of his official duties.']}

CHASE, C. J. A motion was made, some days since, in behalf of the State of Mississippi, for leave to file a bill

in the name of the State, praying this court perpetually to enjoin and restrain Andrew Johnson, President of the United States, and E. O. C. Ord, general commanding in the District of Mississippi and Arkansas, from executing, or in any manner carrying out, certain Acts of Congress therein named.

The Acts referred to are those of 2 March and 23 March 1867, commonly known as the Reconstruction Acts. . . . The single point which requires consideration is this: Can the President be restrained by injunction from carrying into effect an Act of Congress alleged to be unconstitutional?

It is assumed by the counsel for the State of Mississippi, that the President, in the execution of the Reconstruction Acts, is required to perform a mere ministerial duty. In this assumption there is, we think, a confounding of the terms ministerial and executive, which are by no means equivalent in import.

A ministerial duty, the performance of which may, in proper cases, be required of the head of a department, by judicial process, is one in respect to which nothing is left to discretion. It is a simple, definite duty, arising under conditions admitted or proved to exist, and imposed by law. . . .

Very different is the duty of the President in the exercise of the power to see that the laws are faithfully executed, and among these laws the Acts named in the bill. By the first of these Acts he is required to assign generals to command in the several military districts, and to detail sufficient military force to enable such officers to discharge their duties under the law. By the supplementary Act, other duties are imposed on the several commanding generals, and these duties must necessarily be performed under the supervision of the President as commander in chief. The duty thus imposed on the President is in no just sense ministerial. It is purely executive and political.

An attempt on the part of the judicial department of the Government to enforce the performance of such duties by the President might be justly characterized, in

the language of Chief Justice Marshall, as 'an absurd and excessive extravagance.'

It is true that in the instance before us the interposition of the court is not sought to enforce action by the executive under constitutional legislation, but to restrain such action under legislation alleged to be unconstitutional. But we are unable to perceive that this circumstance takes the case out of the general principles which forbid judicial interference with the exercise of executive discretion.

It was admitted in the argument that the application now made to us is without a precedent; and this is of much weight against it. . . .

The fact that no such application was ever before made in any case indicates the general judgment of the profession that no such application should be entertained.

It will hardly be contended that Congress can interpose, in any case, to restrain the enactment of an unconstitutional law; and yet how can the right to judicial interposition to prevent such an enactment, when the purpose is evident and the execution of that purpose certain, be distinguished, in principle, from the right to such interposition against the execution of such a law by the President?

The Congress is the legislative department of the Government; the President is the executive department. Neither can be restrained in its action by the judicial department; though the acts of both, when performed, are, in proper cases, subject to its cognizance.

The impropriety of such interference will be clearly seen upon consideration of its possible consequences.

Suppose the bill filed and the injunction prayed for allowed. If the President refuse obedience, it is needless to observe that the court is without power to enforce its process. If, on the other hand, the President complies with the order of the court and refuses to execute the Acts of Congress, is it not clear that a collision may occur between the executive and legislative departments of the government? May not the House of Representatives impeach the President for such refusal? And in that

case could this court interfere, in behalf of the President, thus endangered by compliance with its mandate, and restrain by injunction the Senate of the United States from sitting as a court of impeachment? Would the strange spectacle be offered to the public world of an attempt by this court to arrest proceedings in that court?

These questions answer themselves. It is true that a State may file an original bill in this court; and it may be true, in some cases, such a bill may be filed against the United States. But we are fully satisfied that this court has no jurisdiction of a bill to enjoin the President in the performance of his official duties, and that no such bill ought to be received by us.

It has been suggested that the bill contains a prayer that, if the relief sought cannot be had against Andrew Johnson as President, it may be granted against Andrew Johnson as a citizen of Tennessee. But it is plain that relief as against the execution of an Act of Congress by Andrew Johnson is relief against its execution by the President. A bill praying an injunction against the execution of an Act of Congress by the incumbent of the presidential office cannot be received, whether it describes him as President or as a citizen of a State.

The motion for leave to file the bill is therefore denied.

## 17. THE THIRD RECONSTRUCTION ACT, 1867

[The Reconstruction Act left doubtful several questions connected with the rights of citizens of varying degrees of loyalty. The military commanders appealed to the President for guidance, and he referred the question to the Attorney-General. His opinions were that an applicant was entitled to registration as a voter if he took the oath laid down by the Act, and that the board of registration had no power to inquire as to its truth or falsity, and, second, that the Act

did not empower the military commanders to remove and replace civil officers at will. These opinions were endorsed by the whole Cabinet, except Stanton. On 19 July Congress passed a second supplemental Reconstruction Act which gave power to the registration officers to investigate the oath; denied the franchise to those who claimed the right on account of a pardon or amnesty granted by the President; ordered the registration lists to be examined that those who did not comply with these stricter requirements might be removed; and gave the power of dismissal of civil officials to the military commanders. The Bill was vetoed by Johnson and passed over his veto.]

*An Act supplementary to an Act entitled 'An Act to provide for the more efficient Government of the Rebel States,' passed 2 March 1867, and the Act supplementary thereto, passed 23 March 1867.*

*Be it enacted*, That it is hereby declared to have been the true intent and meaning of the Acts of 2 March and 23 March 1867, that the governments then existing in the rebel States of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas, and Arkansas were not legal State governments; and that thereafter said governments, if continued, were to be continued subject in all respects to the military commanders of the respective districts, and to the paramount authority of Congress.

SEC. 2. That the commander of any district named in said Act shall have power, subject to the disapproval of the General of the army of the United States, and to have effect till disapproved, whenever in the opinion of such commander the proper administration of said Act shall require it, to suspend or remove from office, or from the performance of official duties and the exercise of official powers, any officer or person holding or exercising, or professing to hold or exercise, any civil or military office or duty in such district under any power, election, appointment or authority derived from, or granted by, or claimed under, any so-called

State or the government thereof, or any municipal or other division thereof, and upon such suspension or removal such commander, subject to the disapproval of the General as aforesaid, shall have power to provide from time to time for the performance of the said duties of such officer or person so suspended or removed, by the detail of some competent officer or soldier of the army, or by the appointment of some other person, to perform the same, and to fill vacancies occasioned by death, resignation, or otherwise.

SEC. 3. That the General of the army of the United States shall be invested with all the powers of suspension, removal, appointment, and detail granted in the preceding section to district commanders.

SEC. 4. That the acts of the officers of the army already done in removing in said districts persons exercising the functions of civil officers, and appointing others in their stead, are hereby confirmed: *Provided*, That any person heretofore or hereafter appointed by any district commander to exercise the functions of any civil office, may be removed either by the military officer in command of the district, or by the General of the army. And it shall be the duty of such commander to remove from office as aforesaid all persons who are disloyal to the Government of the United States, or who use their official influence in any manner to hinder, delay, prevent, or obstruct the due and proper administration of this Act and the Acts to which it is supplementary.

SEC. 5. That the boards of registration provided for in the Act [of 23 March 1867] shall have power, and it shall be their duty, before allowing the registration of any person, to ascertain, upon such facts or information as they can obtain, whether such person is entitled to be registered under said Act, and the oath required by said Act shall not be conclusive on such question, and no person shall be registered unless such board shall decide that he is entitled thereto; and such board shall also have power to examine, under oath (to be administered by any member of such board), any one touching the qualification of any person claiming

registration; . . . *Provided*, That no person shall be disqualified as member of any board of registration by reason of race or color.

SEC. 6. That the true intent and meaning of the oath prescribed in said supplementary Act is (among other things) that no person who has been a member of the legislature of any State, or who has held any executive or judicial office in any State, whether he has taken an oath to support the Constitution of the United States or not, and whether he was holding such office at the commencement of the rebellion, or had held it before, and who has afterwards engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof, is entitled to be registered or to vote; and the words 'executive or judicial office in any State' in said oath mentioned shall be construed to include all civil offices created by law for the administration of any general law of a State, or for the administration of justice. . . .

SEC. 10. That no district commander or member of the board of registration, or any of the officers or appointees acting under them, shall be bound in his action by any opinion of any civil officer of the United States.

SEC. 11. That all provisions of this Act and of the Acts to which this is supplementary shall be construed liberally, to the end that all the intents thereof may be fully and perfectly carried out.

## 18. THE IMPEACHMENT OF PRESIDENT JOHNSON, 1868

[The final move in the campaign of the Radical Republicans against President Johnson was his impeachment, under Article II, Section 4, of the Constitution, the only attempt to impeach a President in the history of the United States.

Various attempts had been made during 1867 to raise the issue in the House of Representatives, and resolutions to this end had been referred to the Committee on the Judiciary. On 25 November that Committee reported in favour of an impeachment, but the House disagreed. On 21 February 1868 Stanton reported to the House Johnson's order removing him from the office of Secretary of War, and a resolution for impeachment was referred to the Committee on Reconstruction. On 24 February the House agreed to a resolution of that Committee in favour of an impeachment, and on 2 March nine articles of impeachment were agreed on. Two more were approved on the following day. The trial before the Senate began on 30 March, Chief Justice Chase presiding. Chase insisted that the Senate should consider itself as a court, and it soon became clear that the issue would depend on a small group of Republican Senators who were prepared to regard themselves as judges rather than as prosecutors, for a two-thirds majority was necessary for conviction, or thirty-six votes out of the fifty-four voting.

The first article to be voted on, on 16 May, was the eleventh. Seven Republicans voted 'not guilty,' and the majority, thirty-five to nineteen, was too small by one vote. On 26 May the vote was taken on the second and third articles, with the same result. The Senate, sitting as a court, then adjourned *sine die*.

If Johnson had been convicted, he would have been succeeded by the President of the Senate, Benjamin Wade, a leading Radical. Not only would the Congressional policy of Reconstruction have proceeded unhindered, but the office of President in the United States would have lost much of its power and the whole balance of the Constitution would have been altered.

(Articles I-IX of the impeachment referred to Johnson's dismissal of Stanton from his office and his replacement by Lorenzo Thomas, the Adjutant-General. Article X charged him generally with attempting to bring Congress into 'disgrace, ridicule, hatred, contempt, and reproach,' and referred to a number of his public speeches in 1866. Article XI, drawn up by Stevens and known as 'the Omnibus Article,' was a general charge summing up the remainder.)

IN THE HOUSE OF REPRESENTATIVES, UNITED STATES.

2 March 1868.

*Articles Exhibited by the House of Representatives of the United States, in the Name of Themselves and All the People of the United States, against Andrew Johnson, President of the United States, in Maintenance and Support of Their Impeachment against Him for High Crimes and Misdemeanors in Office.*

ARTICLE I. That said Andrew Johnson, President of the United States, on the 21st day of February, A.D. 1868, at Washington, in the District of Columbia, unmindful of the high duties of his office, of his oath of office, and of the requirement of the Constitution that he should take care that the laws be faithfully executed, did unlawfully and in violation of the Constitution and laws of the United States issue an order in writing for the removal of Edwin M. Stanton from the office of Secretary for the Department of War, said Edwin M. Stanton having been theretofore duly appointed and commissioned, by and with the advice and consent of the Senate of the United States, as such Secretary; and said Andrew Johnson, President of the United States, on the 12th day of August, A.D. 1867, and during the recess of said Senate, having suspended by his order Edwin M. Stanton from said office, and within twenty days after the first day of the next meeting of said Senate--that is to say, on the 12th day of December, in the year last aforesaid--having reported to said Senate such suspension, with the evidence and reasons for his action in the case and the name of the person designated to perform the duties of such office temporarily until the next meeting of the Senate; and said Senate thereafterwards, on the 13th day of January, A.D. 1868, having duly considered the evidence and reasons reported by said Andrew Johnson for said suspension, and having refused to concur in said suspension, whereby and by force of the provisions of an Act entitled 'An Act regulating the tenure of

certain civil offices,' passed 2 March 1867, said Edwin M. Stanton did forthwith resume the functions of his office, whereof the said Andrew Johnson had then and there due notice; and said Edwin M. Stanton, by reason of the premises, on said 21st day of February, being lawfully entitled to hold said office of Secretary for the Department of War; which said order for the removal of said Edwin M. Stanton is in substance as follows; that is to say:

EXECUTIVE MANSION,  
*Washington, D.C., 21 February 1868.*

HON. EDWIN M. STANTON,  
*Washington, D.C.*

SIR: By virtue of the power and authority vested in me as President by the Constitution and laws of the United States, you are hereby removed from office as Secretary for the Department of War, and your functions as such will terminate upon the receipt of this communication.

You will transfer to Brevet Major-General Lorenzo Thomas, Adjutant-General of the Army, who has this day been authorized and empowered to act as Secretary of War *ad interim*, all records, books, papers, and other public property now in your custody and charge.

Respectfully, yours,  
ANDREW JOHNSON

which order was unlawfully issued with intent then and there to violate the Act entitled 'An Act regulating the tenure of certain civil offices,' passed 2 March 1867 . . . whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

ART. II. That on said 21st day of February, A.D. 1868, at Washington, in the District of Columbia, said Andrew Johnson, President of the United States, . . . did, with intent to violate the Constitution of the United States and the Act aforesaid, issue and deliver to one Lorenzo

Thomas a letter of authority in substance as follows; that is to say:

EXECUTIVE MANSION,  
Washington, D.C., 21 February 1868.

Brevet Major-General LORENZO THOMAS,  
*Adjutant-General, United States Army, Washington, D.C.*

SIR: The Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War *ad interim*, and will immediately enter upon the discharge of the duties pertaining to that office.

Mr Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

Respectfully, yours,

ANDREW JOHNSON

then and there being no vacancy in said office of Secretary for the Department of War; whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

ART. III. That said Andrew Johnson, President of the United States, on the 21st day of February, A.D. 1868, at Washington, in the District of Columbia, did commit and was guilty of a high misdemeanor in office in this, that without authority of law, while the Senate of the United States was then and there in session, he did appoint one Lorenzo Thomas to be Secretary for the Department of War *ad interim*, without the advice and consent of the Senate, and with intent to violate the Constitution of the United States, . . .

ART. IV. That said Andrew Johnson, President of the United States, . . . did unlawfully conspire with one Lorenzo Thomas, and with other persons to the House of Representatives unknown, with intent, by intimidation and threats, unlawfully to hinder and prevent

Edwin M. Stanton, then and there the Secretary for the Department of War, . . . from holding said office of Secretary for the Department of War, contrary to and in violation of the Constitution of the United States and of the provisions of an Act entitled 'An Act to define and punish certain conspiracies,' approved 31 July 1861; . . .

ART. V. That said Andrew Johnson, President of the United States, . . . did unlawfully conspire with one Lorenzo Thomas, and with other persons to the House of Representatives unknown, to prevent and hinder the execution of an Act entitled 'An Act regulating the tenure of certain civil offices,' passed 2 March 1867. . . .

ART. VI. That said Andrew Johnson, President of the United States, . . . did unlawfully conspire with one Lorenzo Thomas by force to seize, take, and possess the property of the United States in the Department of War, and then and there in the custody and charge of Edwin M. Stanton, Secretary for said Department, contrary to the provisions of an Act entitled 'An Act to define and punish certain conspiracies,' approved 31 July 1861, and with intent to violate and disregard an Act entitled 'An Act regulating the tenure of certain civil offices,' passed 2 March 1867; . . .

ART. VII. That said Andrew Johnson, President of the United States, . . . did unlawfully conspire with one Lorenzo Thomas with intent unlawfully to seize, take, and possess the property of the United States in the Department of War, in the custody and charge of Edwin M. Stanton, Secretary for said Department, with intent to violate and disregard the Act entitled 'An Act regulating the tenure of certain civil offices,' passed 2 March 1867; . . .

ART. VIII. That said Andrew Johnson, President of the United States, . . . with intent unlawfully to control the disbursement of the moneys appropriated for the military service and for the Department of War, . . . did unlawfully, and in violation of the Constitution of the United States, and without the advice and consent of the Senate of the United States, . . . there being no

vacancy in the office of Secretary for the Department of War, and with intent to violate and disregard the Act aforesaid, then and there issue and deliver to one Lorenzo Thomas a letter of authority, . . .

ART. IX. That said Andrew Johnson, President of the United States, on the 22d day of February, A.D. 1868, in the District of Columbia, in disregard of the Constitution and the laws of the United States duly enacted, as Commander in Chief of the Army of the United States, did bring before himself then and there William H. Emory, a major-general by brevet in the Army of the United States, actually in command of the Department of Washington and the military forces thereof, and did then and there, as such Commander in Chief, declare to and instruct said Emory that part of a law of the United States, passed 2 March 1867, entitled 'An Act making appropriations for the support of the Army for the year ending 30 June 1868, and for other purposes,' especially the second section thereof, which provides, among other things, that 'all orders and instructions relating to military operations issued by the President or Secretary of War shall be issued through the General of the Army, and in case of his inability through the next in rank,' was unconstitutional . . . with intent thereby to induce said Emory, in his official capacity as commander of the Department of Washington, to violate the provisions of said Act and to take and receive, act upon, and obey such orders as he, the said Andrew Johnson, might make and give, and which should not be issued through the General of the Army of the United States, according to the provisions of said Act, . . .

9 March 1868.

The following additional articles of impeachment were agreed to, viz. :

ART. X. That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and the dignity and proprieties thereof, and of the harmony and courtesies which ought to exist and

be maintained between the executive and legislative branches of the Government of the United States, designing and intending to set aside the rightful authority and powers of Congress, did attempt to bring into disgrace, ridicule, hatred, contempt, and reproach the Congress of the United States and the several branches thereof, to impair and destroy the regard and respect of all the good people of the United States for the Congress and legislative power thereof (which all officers of the Government ought inviolably to preserve and maintain), and to excite the odium and resentment of all the good people of the United States against Congress and the laws by it duly and constitutionally enacted; and, in pursuance of his said design and intent, openly and publicly, and before divers assemblages of the citizens of the United States, convened in divers parts thereof to meet and receive said Andrew Johnson as the Chief Magistrate of the United States, did, on the 18th day of August, A.D. 1866, and on divers other days and times, as well before as afterwards, make and deliver with a loud voice certain intemperate, inflammatory, and scandalous harangues, and did therein utter loud threats and bitter menaces, as well against Congress as the laws of the United States, duly enacted thereby, amid the cries, jeers, and laughter of the multitudes then assembled and in hearing, which are set forth in the several specifications hereinafter written in substance and effect; that is to say:

*Specification first.*—In this, that at Washington, in the District of Columbia, in the Executive Mansion, to a committee of citizens who called upon the President of the United States, speaking of and concerning the Congress of the United States, said Andrew Johnson, President of the United States, heretofore, to wit, on the 18th day of August, A.D. 1866, did in a loud voice declare in substance and effect, among other things; that is to say:

So far as the executive department of the Government is concerned, the effort has been made to restore the Union, to heal the breach, to pour oil into the wounds which were

consequent upon the struggle, and (to speak in common phrase) to prepare, as the learned and wise physician would, a plaster healing in character and coextensive with the wound. We thought and we think that we had partially succeeded; but as the work progresses, as reconstruction seemed to be taking place and the country was becoming reunited, we found a disturbing and marring element opposing us. In alluding to that element I shall go no further than your convention and the distinguished gentleman who has delivered to me the report of its proceedings. I shall make no reference to it that I do not believe the time and the occasion justify.

We have witnessed in one department of the Government every endeavor to prevent the restoration of peace, harmony, and union. We have seen hanging upon the verge of the Government, as it were, a body called, or which assumes to be, the Congress of the United States, while in fact it is a Congress of only a part of the States. We have seen this Congress pretend to be for the Union, when its every step and act tended to perpetuate disunion and make a disruption of the States inevitable. \* \* \* We have seen Congress gradually encroach, step by step, upon constitutional rights, and violate, day after day and month after month, fundamental principles of the Government. We have seen a Congress that seemed to forget that there was a limit to the sphere and scope of legislation. We have seen a Congress in a minority assume to exercise power which, allowed to be consummated, would result in despotism or monarchy itself.

*Specification second.*---In this, that at Cleveland, in the State of Ohio, heretofore, to wit, on the 3rd day of September, A.D. 1866, before a public assemblage of citizens and others, said Andrew Johnson, President of the United States, speaking of and concerning the Congress of the United States, did in a loud voice declare in substance and effect, among other things; that is to say:

I will tell you what I did do. I called upon your Congress that is trying to break up the Government. \* \* \*

In conclusion, besides that, Congress had taken much pains to poison their constituents against him. But what had Congress done? Have they done anything to restore the Union of these States? No. On the contrary, they have done everything to prevent it. And because he stood now

where he did when the rebellion commenced, he had been denounced as a traitor. Who had run greater risks or made greater sacrifices than himself? But Congress, factious and domineering, had undertaken to poison the minds of the American people.

*Specification third.*—In this, that at St Louis, in the State of Missouri, heretofore, to wit, on the 8th day of September, A.D. 1866, before a public assemblage of citizens and others, said Andrew Johnson, President of the United States, speaking of and concerning the Congress of the United States, did in a loud voice declare in substance and effect, among other things; that is to say :

Go on. Perhaps if you had a word or two on the subject of New Orleans you might understand more about it than you do. And if you will go back and ascertain the cause of the riot at New Orleans, perhaps you will not be so prompt in calling out 'New Orleans.' If you will take up the riot at New Orleans and trace it back to its source or its immediate cause, you will find out who was responsible for the blood that was shed there. If you will take up the riot at New Orleans and trace it back to the Radical Congress, you will find that the riot at New Orleans was substantially planned. . . . You will also find that that convention did assemble, in violation of law, and the intention of that convention was to supersede the reorganized authorities in the State government of Louisiana, which had been recognized by the Government of the United States; and every man engaged in that rebellion in that convention, with the intention of superseding and upturning the civil government which had been recognized by the Government of the United States, I say that he was a traitor to the Constitution of the United States; and hence you find that another rebellion was commenced, *having its origin in the Radical Congress.* \*\*\*

So much for the New Orleans riot. And there was the cause and the origin of the blood that was shed; and every drop of blood that was shed is upon their skirts, and they are responsible for it. I could test this thing a little closer, but will not do it here to-night. But when you talk about the causes and consequences that resulted from proceedings of that kind, perhaps, as I have been introduced here, and you have provoked questions of this kind—though it does not

provoke me—I will tell you a few wholesome things that have been done by this Radical Congress in connection with New Orleans and the extension of the elective franchise.

I know that I have been traduced and abused. I know it has come in advance of me, here as elsewhere, that I have attempted to exercise an arbitrary power in resisting laws that were intended to be forced upon the Government; that I had exercised that power; that I had abandoned the party that elected me, and that I was a traitor, because I exercised the veto power in attempting and did arrest for a time a bill that was called a 'Freedman's Bureau' bill; yes, that I was a traitor. And I have been traduced, I have been slandered, I have been maligned, I have been called Judas Iscariot and all that. Now, my countrymen, here to-night, it is very easy to indulge in epithets; it is easy to call a man a Judas and cry out 'traitor'; but when he is called upon to give arguments and facts he is very often found wanting. Judas Iscariot—Judas. There was a Judas, and he was one of the twelve apostles. Oh, yes; the twelve apostles had a Christ. The twelve apostles had a Christ, and he never could have had a Judas unless he had had twelve apostles. If I have played the Judas, who has been my Christ that I have played the Judas with? Was it Thad Stevens? Was it Wendell Phillips? Was it Charles Sumner? These are the men that stop and compare themselves with the Savior, and everybody that differs with them in opinion, and to try to stay and arrest their diabolical and nefarious policy, is to be denounced as a Judas. \* \* \*

Well, let me say to you, if you will stand by me in this action, if you will stand by me in trying to give the people a fair chance—soldiers and citizens—to participate in these offices, God being willing, I will kick them out. I will kick them out just as fast as I can.

Let me say to you in concluding that what I have said I intended to say. I was not provoked into this, and I care not for their menaces, the taunts and the jeers. I care not for threats. I do not intend to be bullied by my enemies nor overawed by my friends. But, God willing, with your help I will veto their measures whenever any of them come to me:

which said utterances, declarations, threats, and harangues, highly censurable in any, are peculiarly indecent and unbecoming in the Chief Magistrate of the United States, by means whereof said Andrew

Johnson has brought the high office of the President of the United States into contempt, ridicule, and disgrace, to the great scandal of all good citizens; whereby said Andrew Johnson, President of the United States, did commit and was then and there guilty of a high misdemeanor in office.

ART. XI. That said Andrew Johnson, President of the United States, . . . did on the 18th day of August, A.D. 1866, at the city of Washington, in the District of Columbia, by public speech, declare and affirm in substance that the Thirty-ninth Congress of the United States was not a Congress of the United States authorized by the Constitution to exercise legislative power under the same, but, on the contrary, was a Congress of only part of the States; thereby denying and intending to deny that the legislation of said Congress was valid or obligatory upon him, the said Andrew Johnson, except in so far as he saw fit to approve the same, . . . in pursuance of said declaration the said Andrew Johnson, President of the United States, afterwards, to wit, on the 21st day of February, A.D. 1868, at the city of Washington, in the District of Columbia, did unlawfully, and in disregard of the requirement of the Constitution that he should take care that the laws be faithfully executed, attempt to prevent the execution of an Act entitled 'An Act regulating the tenure of certain civil offices,' passed 2 March 1867, by unlawfully devising and contriving, and attempting to devise and contrive, means by which he should prevent Edwin M. Stanton from forthwith resuming the functions of the office of Secretary for the Department of War, notwithstanding the refusal of the Senate to concur in the suspension theretofore by said Andrew Johnson of said Edwin M. Stanton from said office of Secretary for the Department of War, and also by further unlawfully devising and contriving, and attempting to devise and contrive, means then and there to prevent the execution of an Act entitled 'An Act making appropriations for the support of the Army for the fiscal year ending 30 June 1868, and for other

purposes,' approved 2 March 1867, and also to prevent the execution of an Act entitled 'An Act to provide for the more efficient government of the rebel States,' passed 2 March 1867, whereby the said Andrew Johnson, President of the United States, did then, to wit, on the 21st day of February, A.D. 1868, at the city of Washington, commit and was guilty of a high misdemeanor in office.

## 19. THE FOURTH RECONSTRUCTION ACT, 1868

[Under the Second Reconstruction Act (No. 14) the new State constitutions were only to be considered as ratified when they were accepted by a majority of registered voters. By the spring of 1868 the Republicans no longer wished to keep the representatives of the Southern States out of Congress, but rather, as they had been reconstructed and would certainly return Republican members, to include them. In Alabama a large number of voters registered as electors but refused to vote, so that the ratification of the new constitution was invalid. To remedy this, Congress passed another supplemental Reconstruction Act on 11 March 1868, allowing the ratification of the new State constitutions on a majority of voters only.]

### *An Act to amend the Act of 23 March 1867*

*Be it enacted, That hereafter any election authorized by the Act [of 23 March 1867] shall be decided by a majority of the votes actually cast; and at the election in which the question of the adoption or rejection of any constitution is submitted, any person duly registered in the State may vote in the election district where he offers to vote when he has resided therein for ten days next preceding such election, upon presentation of his certificate of registration, his affidavit, or other satis-*

factory evidence, under such regulations as the district commanders may prescribe.

SEC. 2. *And be it further enacted*, That the constitutional convention of any of the States mentioned in the Acts to which this is amendatory may provide that at the time of voting upon the ratification of the constitution the registered voters may vote also for members of the House of Representatives of the United States, and for all elective officers provided for by the said constitution; and the same election officers who shall make the return of the votes cast on the ratification or rejection of the constitution, shall enumerate and certify the votes cast for members of Congress.

## 20. THE KU KLUX KLAN, 1868

[The movement of the Ku Klux Klan started at a meeting of young men at Pulaski, Tennessee, in 1866. They formed themselves into a *κύκλος*, a secret society to protect the whites by terrorizing the negroes and playing on their primitive superstitions. These societies, or Dens as they were called, spread themselves throughout the more northern rebel States, and in April 1867 they combined to form themselves into the Ku Klux Klan. Their constitution was revised in 1868, by which time they had become a formidable power.

The Ku Klux Klan was by no means the only secret society of this kind. That of the Knights of the White Camellia, centred in New Orleans, was probably more extensive. Congress struck at these societies, chiefly through the so-called Ku Klux Act (see No. 25). Probably because the Klan was becoming a cover for all kinds of lawlessness, it was disbanded by its leaders in 1869, but similar activities continued for some years.]

### *Organization and Principles of the Ku Klux Klan* *Appellation*

This Organization shall be styled and denominated the Order of the \* \* \*

*Creed*

We, the Order of the \* \* \*, reverentially acknowledge the majesty and supremacy of the Divine Being, and recognize the goodness and providence of the same. And we recognize our relation to the United States Government, the supremacy of the Constitution, the Constitutional Laws thereof, and the Union of States thereunder.

*Character and Objects of the Order*

This is an institution of Chivalry, Humanity, Mercy, and Patriotism; embodying in its genius and its principles all that is chivalric in conduct, noble in sentiment, generous in manhood, and patriotic in purpose; its peculiar objects being

First: To protect the weak, the innocent, and the defenseless, from the indignities, wrongs, and outrages of the lawless, the violent, and the brutal; to relieve the injured and oppressed; to succor the suffering and unfortunate, and especially the widows and orphans of Confederate soldiers.

Second: To protect and defend the Constitution of the United States, and all laws passed in conformity thereto, and to protect the States and the people thereof from all invasion from any source whatever.

Third: To aid and assist in the execution of all constitutional laws, and to protect the people from unlawful seizure, and from trial except by their peers in conformity to the laws of the land.

*Titles*

SEC. 1. The officers of this Order shall consist of a Grand Wizard of the Empire, and his ten Genii; a Grand Dragon of the Realm, and his eight Hydras; a Grand Titan of the Dominion, and his six Furies; a Grand Giant of the Province, and his four Goblins; a Grand Cyclops of the Den, and his two Night Hawks; a Grand Magi, a Grand Monk, a Grand Scribe, a Grand Exchequer, a Grand Turk, and a Grand Sentinel.

SEC. 2. The body politic of this Order shall be known and designated as 'Ghouls.'

*Territory and its Divisions*

SEC. 1. The territory embraced within the jurisdiction of this Order shall be coterminous with the States of Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Arkansas, Missouri, Kentucky, and Tennessee; all combined constituting the Empire.

SEC. 2. The Empire shall be divided into four departments, the first to be styled the Realm, and coterminous with the boundaries of the several States; the second to be styled the Dominion and to be co-terminous with such counties as the Grand Dragons of the several Realms may assign to the charge of the Grand Titan. The third to be styled the Province and to be coterminous with the several counties; *provided* the Grand Titan may, when he deems it necessary, assign two Grand Giants to one Province, prescribing, at the same time, the jurisdiction of each. The fourth department to be styled the Den, and shall embrace such part of a Province as the Grand Giant shall assign to the charge of a Grand Cyclops. . . .

*Interrogations to be Asked*

1st. Have you ever been rejected, upon application for membership in the \* \* \*, or have you ever been expelled from the same?

2d. Are you now, or have you ever been, a member of the Radical Republican party, or either of the organizations known as the 'Loyal League' and the 'Grand Army of the Republic'?

3d. Are you opposed to the principles and policy of the Radical party, and to the Loyal League, and the Grand Army of the Republic, so far as you are informed of the character and purposes of those organizations?

4th. Did you belong to the Federal army during the

late war, and fight against the South during the existence of the same?

5th. Are you opposed to negro equality, both social and political?

6th. Are you in favor of a white man's government in this country?

7th. Are you in favor of constitutional liberty, and a government of equitable laws instead of a government of violence and oppression?

8th. Are you in favor of maintaining the Constitutional rights of the South?

9th. Are you in favor of the re-enfranchisement and emancipation of the white men of the South, and the restitution of the Southern people to all their rights, alike proprietary, civil, and political?

10th. Do you believe in the inalienable right of self-preservation of the people against the exercise of arbitrary and unlicensed power?

. . . 9. The most profound and rigid secrecy concerning any and everything that relates to the Order shall at all times be maintained.

10. Any member who shall reveal or betray the secrets of this Order shall suffer the extreme penalty of the law.

21. ACT ADMITTING NORTH CAROLINA,  
SOUTH CAROLINA, LOUISIANA, GEORGIA,  
ALABAMA, AND FLORIDA TO  
REPRESENTATION IN CONGRESS, 1868

[On 22 June 1868 an Act was passed admitting Arkansas to representation in Congress, the second Confederate State to be received back into the Union. (Tennessee had been recognized in 1866.) On 11 May the Committee on Reconstruction reported a bill to admit the States of North and South Carolina, Louisiana, Georgia, Alabama, and Florida. By that date all these six States had held elections which had ratified the new constitutions set up under the Reconstruction

Acts. The bill was passed over the President's veto on 25 June 1868. In July all these States passed the Fourteenth Amendment, and their representatives were accepted in Congress.

In the case of Georgia a special clause was inserted in the Act demanding the repeal of a clause in the Constitution forbidding the collection of debts due before 1 January 1865. This was duly carried out. But in September the legislature of the State expelled its negro members, with the result that representatives of Georgia were expelled once more from Congress and were not finally admitted until 1870.]

Whereas the people of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida have, in pursuance of the provisions of [the Reconstruction Act of 2 March 1867] and the Acts supplementary thereto, framed constitutions of State government which are republican, and have adopted said constitutions by large majorities of the votes cast at the elections held for the ratification or rejection of the same: Therefore,

*Be it enacted*, That each of the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida shall be entitled and admitted to representation in Congress as a State of the Union when the legislature of such State shall have duly ratified the amendment to the Constitution of the United States proposed by the Thirty-ninth Congress, and known as article fourteen, upon the following fundamental conditions: That the constitutions of neither of said States shall ever be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote in said State, who are entitled to vote by the constitution thereof herein recognized, except as a punishment for such crimes as are now felonies at common law, whereof they shall have been duly convicted under laws equally applicable to all the inhabitants of said State: *Provided*, That any alteration of said constitution may be made with regard to the time and place of residence of voters; and the State of Georgia shall only be entitled and admitted to representation upon this further funda-

82 *Johnson's Proclamation of General Amnesty, 1868*

mental condition: that the first and third subdivisions of section seventeen of the fifth article of the constitution of said State, except the proviso to the first subdivision, shall be null and void, and that the general assembly of said State by solemn public act shall declare the assent of the State to the foregoing fundamental condition. . . .

SEC. 3. *And be it further enacted*, That the first section of this Act shall take effect as to each State, except Georgia, when such State shall, by its legislature, duly ratify article fourteen of the amendments to the Constitution of the United States, proposed by the Thirty-ninth Congress, and as to the State of Georgia when it shall in addition give the assent of said State to the fundamental condition hereinbefore imposed upon the same; and thereupon the officers of each State duly elected and qualified under the constitution thereof shall be inaugurated without delay; but no person prohibited from holding office under the United States, or under any State, by section three of the proposed amendment to the Constitution of the United States, known as article fourteen, shall be deemed eligible to any office in either of said States, unless relieved from disability as provided in said amendment; and it is hereby made the duty of the President within ten days after receiving official information of the ratification of said amendment by the legislature of either of said States to issue a proclamation announcing that fact.

22. JOHNSON'S PROCLAMATION OF  
GENERAL AMNESTY, 1868

[The Presidential Election of November 1868 resulted in an overwhelming victory for General Grant, the Republican candidate, over Horatio Seymour, representing the Democrats. President Johnson was powerless to do much to affect the course of events during the last few months of his term of office, but on Christmas Day, 1868, he issued a Proclamation of General Amnesty, giving a full pardon to all the Con-

federates. This did not affect the political disabilities under the Fourteenth Amendment. One result of this proclamation was the release of Jefferson Davis, the President of the Confederate States.]

Whereas the President of the United States has heretofore set forth several proclamations, offering amnesty and pardon to persons who had been or were concerned in the late rebellion against the lawful authority of the Government of the United States, which proclamations were severally issued on the 8th day of December 1863, on the 26th day of March 1864, on the 29th day of May 1865, on the 7th day of September 1867, and on the 4th day of July in the present year:

And whereas the authority of the Federal Government having been re-established in all the States and Territories within the jurisdiction of the United States, it is believed that such prudential reservations and exceptions as of the dates of said several proclamations were deemed necessary and proper may now be wisely and justly relinquished, and that a universal amnesty and pardon for participation in said rebellion extended to all who have borne any part therein will tend to secure permanent peace, order, and prosperity throughout the land, and to renew and fully restore confidence and fraternal feeling among the whole people, and their respect and attachment to the national government, designed by its patriotic founders for general good:

Now, therefore, be it known that I, ANDREW JOHNSON, President of the United States, by virtue of the power and authority in me vested by the Constitution, and in the name of the sovereign people of the United States, do hereby proclaim and declare unconditionally, and without reservation, to all and to every person who directly or indirectly participated in the late insurrection or rebellion, a full pardon and amnesty for the offence of treason against the United States, or of adhering to their enemies during the late civil war, with restoration of all rights, privileges, and immunities under the Constitution and the laws which have been made in pursuance thereof.

## 23. TEXAS *v.* WHITE, 1869

[The Reconstruction Government of Texas brought this suit before the Supreme Court to enjoin the defendants from receiving payments on certain United States bonds which had been disposed of during the Civil War to pay for supplies for the Confederate troops. It was claimed that the State of Texas had by her secession ceased to be a State of the Union. The case raised, therefore, the entire question of the legality of Secession and Reconstruction.]

CHASE, C.J. . . . The first inquiries to which our attention was directed by counsel arose upon the allegations . . . that the State, having severed her relations with a majority of the States of the Union, and having by her ordinance of secession attempted to throw off her allegiance to the Constitution, and the government of the United States, has so far changed her status as to be disabled from prosecuting suits in the national courts.

It is not to be questioned that this court has original jurisdiction of suits by States against citizens of other States, or that the States entitled to invoke this jurisdiction must be States of the Union. But it is equally clear that no such jurisdiction has been conferred upon this court of suits by any other political communities than such States.

If, therefore, it is true that the State of Texas was not at the time of filing this bill, or is not now, one of the United States, we have no jurisdiction of this suit, and it is our duty to dismiss it. . . .

In the Constitution the term 'State' most frequently expresses the combined idea just noticed, of people, territory, and government. A State, in the ordinary sense of the Constitution, is a political community of free citizens; occupying a territory of defined boundaries and organized under a government sanctioned and established by the

consent of the governed. It is the union of such States, under a common constitution, which forms the distinct and greater political unit, which the Constitution designates as the United States, and makes of the people and States which compose it one people and one country. . . .

The Republic of Texas was admitted into the Union, as a State, on the 27th of December 1845. By this act the new State, and the people of the new State, were invested with all the rights, and became subject to all the responsibilities and duties of the original States under the Constitution.

From the date of admission until 1861 the State was represented in the Congress of the United States by her senators and representatives, and her relations as a member of the Union remained unimpaired. In that year, acting upon the theory that the rights of a State under the Constitution might be renounced, and her obligations thrown off at pleasure, Texas undertook to sever the bond thus formed, and to break up her constitutional relations with the United States. . . .

The position thus assumed could only be maintained by arms, and Texas accordingly took part, with the other Confederate States, in the war of rebellion, which these events made inevitable. During the whole of that war there was no governor, or judge, or any other State officer in Texas who recognized the National authority. Nor was any officer of the United States permitted to exercise any authority whatever under the National government within the limits of the State, except under the immediate protection of the National military forces.

Did Texas, in consequence of these acts, cease to be a State? Or, if not, did the State cease to be a member of the Union?

It is needless to discuss at length the question whether the right of a State to withdraw from the Union for any cause, regarded by itself as sufficient, is consistent with the Constitution of the United States.

The Union of the States was never a purely artificial

and arbitrary relation. It began among the Colonies, and grew out of common origin, mutual sympathies, kindred principles, similar interests, and geographical relations. It was confirmed and strengthened by the necessities of war, and received definite form, and character, and sanction from the Articles of Confederation. By these the Union was solemnly declared to be 'perpetual.' And when these Articles were found to be inadequate to the exigencies of the country, the Constitution was ordained 'to form a more perfect Union.' It is difficult to convey the idea of indissoluble unity more clearly than by these words. What can be indissoluble if a perpetual Union made more perfect is not?

But the perpetuity and indissolubility of the Union by no means implies the loss of distinct and individual existence, or of the right of self-government by the States. Under the Articles of Confederation each State retained its sovereignty, freedom, and independence, and every power, jurisdiction, and right not expressly delegated to the United States. Under the Constitution, though the powers of the States were much restricted, still, all powers not delegated to the United States, nor prohibited to the States, are reserved to the States, respectively, or to the people. And we have already had occasion to remark at this term, that 'the people of each State compose a State, having its own government, and endowed with all the functions essential to separate and independent existence,' and that 'without the States in union, there could be no such political body as the United States.' Not only, therefore, can there be no loss of separate and independent autonomy to the States, through their union under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.

When, therefore, Texas became one of the United States, she entered into an indissoluble relation. All the obligations of perpetual union, and all the guaranties of republican government in the Union, attached at once to the State. The Act which consummated her admission into the Union was something more than a compact; it was the incorporation of a new member into the political body. And it was final. The union between Texas and the other States was as complete, as perpetual, and as indissoluble as the union between the original States. There was no place for reconsideration or revocation except through revolution, or through consent of the States.

Considered therefore as transactions under the Constitution, the ordinance of secession, adopted by the convention and ratified by a majority of the citizens of Texas, and all the Acts of her legislature intended to give effect to that ordinance, were absolutely void. They were utterly without operation in law. The obligations of the State, as a member of the Union, and of every citizen of the State, remained perfect and unimpaired. It certainly follows that the State did not cease to be a State, nor her citizens to be citizens of the Union. If this were otherwise, the State must have become foreign, and her citizens foreigners. The war must have become a war for conquest and subjugation.

Our conclusion therefore is, that Texas continued to be a State, and a State of the Union, notwithstanding the transactions to which we have referred. . . .

But in order to the exercise by a State, of the right to sue in this court, there needs to be a State government, competent to represent the State in its relations with the National government, so far at least as the institution and prosecution of a suit is concerned.

And it is by no means a logical conclusion, from the premises which we have endeavored to establish, that the governmental relations of Texas to the Union remained unaltered. . . . No one has been bold enough to contend that, while Texas was controlled by a government hostile to the United States, and in affiliation with

a hostile confederation, waging war upon the United States, senators chosen by her legislature, or representatives elected by her citizens, were entitled to seats in Congress, or that any suit, instituted in her name, could be entertained in this court. All admit that, during this condition of civil war, the rights of the State as a member, and of her people as citizens of the Union, were suspended. The government and the citizens of the State, refusing to recognize their constitutional obligations, assumed the character of enemies, and incurred the consequences of rebellion.

These new relations imposed new duties upon the United States. The first was that of suppressing the rebellion. The next was that of re-establishing the broken relations of the State with the Union. The first of these duties having been performed, the next necessarily engaged the attention of the national government.

The authority for the performance of the first had been found in the power to suppress insurrection and carry on war; for the performance of the second, authority was derived from the obligation of the United States to guarantee to every State in the Union a republican form of government. The latter, indeed, in the case of a rebellion which involves the government of a State, and for the time excludes the National authority from its limits, seems to be a necessary complement to the former.

Of this the case of Texas furnishes a striking illustration. When the war closed there was no government in the State except that which had been organized for the purpose of waging war against the United States. That government immediately disappeared. The chief functionaries left the State. Many of the subordinate officials followed their example. Legal responsibilities were annulled or greatly impaired. It was inevitable that great confusion should prevail. If order was maintained, it was where the good sense and virtue of the citizens gave support to local acting magistrates, or supplied more directly the needful restraints. . . .

There being no government in Texas in constitutional relations with the Union, it became the duty of the United States to provide for the restoration of such a government. . . .

It is not important to review, at length, the measures which have been taken under this power, by the executive and legislative departments of the National government. It is proper, however, to observe that almost immediately after the cessation of organized hostilities, and while the war yet smouldered in Texas, the President of the United States issued his proclamation appointing a provisional governor for the State, and providing for the assembling of a convention, with a view to the re-establishment of a republican government, under an amended constitution, and to the restoration of the State to her proper constitutional relations. A convention was accordingly assembled, the constitution amended, elections held, and a State government, acknowledging its obligations to the Union, established.

Whether the action thus taken was, in all respects, warranted by the Constitution, it is not now necessary to determine. The power exercised by the President was supposed, doubtless, to be derived from his constitutional functions as commander-in-chief; and, so long as the war continued, it cannot be denied that he might institute temporary government within insurgent districts, occupied by the National forces, or take measures, in any State, for the restoration of State government faithful to the Union, employing, however, in such efforts, only such means and agents as were authorized by constitutional laws.

But the power to carry into effect the clause of the guaranty is primarily a legislative power, and resides in Congress. 'Under the fourth article of the Constitution, it rests with Congress to decide what government is the established one in a State. For, as the United States guaranty to each State a republican government, Congress must necessarily decide what government is established in the State before it can determine whether it is republican or not.'

This is the language of the late Chief Justice, speaking for this court, in a case from Rhode Island, arising from the organization of opposing governments in that State. And we think that the principle sanctioned by it may be applied with even more propriety to the case of a State deprived of all rightful government by revolutionary violence, though necessarily limited to cases where the rightful government is thus subverted or in imminent danger of being overthrown by an opposing government set up by force within the State.

The action of the President must, therefore, be considered as provisional, and in that light it seems to have been regarded by Congress. It was taken after the term of the 38th Congress had expired. The 39th Congress, which assembled in December 1865, followed by the 40th Congress, which met in March 1867, proceeded, after long deliberation, to adopt various measures for reorganization and restoration. These measures were embodied in proposed amendments to the Constitution, and in the Acts known as the Reconstruction Acts, which have been so far carried into effect, that a majority of the States which were engaged in the rebellion have been restored to their constitutional relations, under forms of government, adjudged to be republican by Congress, through the admission of their 'Senators and Representatives into the councils of the Union.'

Nothing in the case before us requires the court to pronounce judgment upon the constitutionality of any particular provision of these Acts. . . .

What has thus been said generally describes, with sufficient accuracy, the situation of Texas. A provisional governor of the State was appointed by the President in 1865; in 1866 a governor was elected by the people under the constitution of that year; at a subsequent date a governor was appointed by the commander of the district. Each of the three exercised executive functions and actually represented the State in the executive department:

In the case before us each has given his sanction to the prosecution of the suit, and we find no difficulty, without

investigating the legal title of either to the executive office, in holding that the sanction thus given sufficiently warranted the action of the solicitor and counsel in behalf of the State. The necessary conclusion is that the suit was instituted and is prosecuted by competent authority. . . .

On the whole case, therefore, our conclusion is that the State of Texas is entitled to the relief sought by her bill, and a decree must be made accordingly.

## 24. THE FIFTEENTH AMENDMENT, 1870

[The Fifteenth Amendment, stating that the right to vote should not be denied on account of race, colour, or previous condition of servitude, was passed through Congress in February 1869. It was intended to make good the inadequacy of the second clause of the Fourteenth Amendment, but it actually affected the Northern States more than the Southern, where negro franchise was already established. The Amendment was ratified by the necessary number of States and proclaimed on 30 March 1870.

In point of fact the Fifteenth Amendment hardly succeeded in carrying out what was hoped of it. After the restoration of 'white' rule in the South a number of means were employed to disfranchise the negroes of which the most successful were the introduction into the State constitution of a clause disfranchising all illiterates except those whose ancestors had had the right to vote before 1860, the so-called 'grandfather clause,' and of one requiring electors to show that they could explain the Constitution to the satisfaction of the registration officers.]

SEC. 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

## 25. THE KU KLUX ACT, 1871

[In May 1870 and February 1871, Acts were passed to enforce the Fifteenth Amendment, directed largely against the terrorizing of negro voters by the Ku Klux Klan and other similar secret societies. On 20 April 1871 Congress passed a more drastic Act 'to enforce the provisions of the Fourteenth Amendment,' known as the Ku Klux Act, for the same purpose. This gave the President power to restore military rule in the South, and on 17 October nine counties in South Carolina were placed under martial law. It was not until April 1877 that military law was finally abandoned.]

### *An Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other Purposes.*

*Be it enacted . . . ,* That any person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress; such proceeding to be prosecuted in the several district or circuit courts of the United States, with and subject to the same rights of appeal, review upon error, and other remedies provided in like cases in such courts, under the provisions of the [Civil Rights Act of 1866], and the other remedial laws of the United States which are in their nature applicable in such cases.

SEC. 2. That if two or more persons within any State or Territory of the United States shall conspire together to overthrow, or to put down, or to destroy by force

the government of the United States, or to levy war against the United States, or to oppose by force the authority of the government of the United States, or by force, intimidation, or threat to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, or by force, intimidation, or threat to prevent any person from accepting or holding any office or trust or place of confidence under the United States, or from discharging the duties thereof, or by force, intimidation, or threat to induce any officer of the United States to leave any State, district, or place where his duties as such officer might lawfully be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or to injure his person while engaged in the lawful discharge of the duties of his office, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duty, or by force, intimidation, or threat to deter any party or witness in any court of the United States from attending such court, or from testifying in any matter pending in such court fully, freely, and truthfully, or to injure any such party or witness in his person or property on account of his having so attended or testified, or by force, intimidation, or threat to influence the verdict, presentment, or indictment, of any juror or grand juror in any court of the United States, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or on account of his being or having been such juror, or shall conspire together, or go in disguise upon the public highway or upon the premises of another for the purpose, either directly or indirectly, of depriving any person or any class of persons of the equal protection of the laws, or of equal privileges or immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State from giving or securing to all persons within such State the equal protection of

the laws, or shall conspire together for the purpose of in any manner impeding, hindering, obstructing, or defeating the due course of justice in any State or Territory, with intent to deny to any citizen of the United States the due and equal protection of the laws, or to injure any person in his person or his property for lawfully enforcing the right of any person or class of persons to the equal protection of the laws, or by force, intimidation, or threat to prevent any citizen of the United States lawfully entitled to vote from giving his support or advocacy in a lawful manner towards or in favor of the election of any lawfully qualified person as an elector of President or Vice-President of the United States, or as a member of the Congress of the United States, or to injure any such citizen in his person or property on account of such support or advocacy, each and every person so offending shall be deemed guilty of a high crime, and, upon conviction thereof in any district or circuit court of the United States or district or supreme court of any Territory of the United States having jurisdiction of similar offences, shall be punished by a fine not less than five hundred nor more than five thousand dollars, or by imprisonment, with or without hard labor, as the court may determine, for a period of not less than six months nor more than six years, as the court may determine, or by both such fine and imprisonment, as the court shall determine. . . .

SEC. 3. That in all cases where insurrection, domestic violence, unlawful combinations, or conspiracies in any State shall so obstruct or hinder the execution of the laws thereof, and of the United States, as to deprive any portion or class of the people of such State of any of the rights, privileges, or immunities, or protection, named in the Constitution and secured by this Act, and the constituted authorities of such State shall either be unable to protect, or shall, from any cause, fail in or refuse protection of the people in such rights, such facts shall be deemed a denial by such State of the equal protection of the laws to which they are entitled under the Constitution of the United States;

and in all such cases . . . it shall be lawful for the President, and it shall be his duty to take such measures, by the employment of the militia or the land and naval forces of the United States, or of either, or by other means, as he may deem necessary for the suppression of such insurrection, domestic violence, or combinations. . . .

SEC. 4. That whenever in any State or part of a State the unlawful combinations named in the preceding section of this Act shall be organized and armed, and so numerous and powerful as to be able, by violence, to either overthrow or set at defiance the constituted authorities of such State, and of the United States within such State, or when the constituted authorities are in complicity with, or shall connive at the unlawful purposes of, such powerful and armed combinations; and whenever, by reason of either or all of the causes aforesaid, the conviction of such offenders and the preservation of the public safety shall become in such district impracticable, in every such case such combinations shall be deemed a rebellion against the Government of the United States, and during the continuance of such rebellion, and within the limits of the district which shall be so under the sway thereof, such limits to be prescribed by proclamation, it shall be lawful for the President of the United States, when in his judgment the public safety shall require it, to suspend the privileges of the writ of habeas corpus, to the end that such rebellion may be overthrown: *Provided*, That all the provisions of the second section of [the Habeas Corpus Act of 3 March 1863], which relate to the discharge of prisoners other than prisoners of war, and to the penalty for refusing to obey the order of the court, shall be in full force so far as the same are applicable to the provisions of this section: *Provided further*, That the President shall first have made proclamation, as now provided by law, commanding such insurgents to disperse: *And provided also*, That the provisions of this section shall not be in force after the end of the next regular session of Congress.

SEC. 5. That no person shall be a grand or petit juror in any court of the United States upon any inquiry, hearing, or trial of any suit, proceeding, or prosecution based upon or arising under the provisions of this Act who shall, in the judgment of the court, be in complicity with any such combination or conspiracy; and every such juror shall, before entering upon any such inquiry, hearing, or trial, take and subscribe an oath in open court that he has never, directly or indirectly, counselled, advised, or voluntarily aided any such combination or conspiracy. . . .

## 26. THE TREATY OF WASHINGTON, 1871

[During the Civil War the Northern States had suffered severely from the depredations of several Confederate commerce raiders, built or fitted out in British yards, of which the most important was the *Alabama*. This ship had been built at Liverpool, and the British Government was undoubtedly at fault in allowing it to leave the port. After the end of the war the United States presented large claims against Great Britain on account of the losses she had suffered. For some time little was done to settle the matter, and in 1869 a Treaty of Arbitration, proposed by the American Government and accepted by the British, was rejected by the Senate. The situation was becoming dangerous when, in 1871, the two countries agreed on a fresh start and a Joint Commission was set up to consider various points in dispute, including the *Alabama* claims. The American commissioners proposed that Great Britain should pay an agreed sum as compensation or that the question of liability should be referred to a competent tribunal, but that, in any case, the decision should depend on the acceptance of certain principles governing the obligations of neutrals in time of war. The British Government felt unable to accept the assumption that these principles were in force when the claims arose, but eventually a compromise was reached and

Great Britain agreed to the famous 'Three Rules' as a basis for adjudicating the claim.

By the Treaty of Washington, signed on 8 May 1871, it was decided that the question should be referred to arbitration at Geneva. When the American case was stated it was found that the Government had put forward enormous 'indirect claims' for incidental damages. The British Government had understood that these 'indirect claims' had been abandoned, and there was another deadlock. In the end this too was resolved, and the Tribunal, on 14 September 1872, awarded damages to the United States amounting to 15,500,000 dollars.

The *Alabama* case is one of the most successful cases of arbitration in history, and its conclusion did much to improve relations between the two countries.]

*Treaty Relative to Claims, Fisheries, Navigation of the St Lawrence, etc., American Lumber on the River St John; Boundary.*

ART. I. Whereas differences have arisen between the Government of the United States and the Government of Her Britannic Majesty, and still exist, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the 'Alabama Claims':

And whereas Her Britannic Majesty has authorized her High Commissioners and Plenipotentiaries to express, in a friendly spirit, the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the *Alabama* and other vessels from British ports, and for the depredations committed by those vessels:

Now, in order to remove and adjust all complaints and claims on the part of the United States, and to provide for the speedy settlement of such claims which are not admitted by Her Britannic Majesty's Government, the high contracting parties agree that all the said claims, growing out of acts committed by the aforesaid vessels and generically known as the 'Alabama Claims,' shall be referred to a tribunal of arbitration

to be composed of five Arbitrators, to be appointed in the following manner, that is to say: One shall be named by the President of the United States; one shall be named by Her Britannic Majesty; His Majesty the King of Italy shall be requested to name one; the President of the Swiss Confederation shall be requested to name one; and His Majesty the Emperor of Brazil shall be requested to name one. . . .

ART. II. The Arbitrators shall meet at Geneva, in Switzerland, at the earliest convenient day . . . and shall proceed impartially and carefully to examine and decide all questions that shall be laid before them on the part of the Governments of the United States and Her Britannic Majesty respectively. All questions considered by the tribunal, including the final award, shall be decided by a majority of all the Arbitrators. . . .

ART. VI. In deciding the matters submitted to the Arbitrators, they shall be governed by the following three rules, . . . and by such principles of international law not inconsistent therewith as the Arbitrators shall determine to have been applicable to the case.

#### RULES

A neutral Government is bound—

First, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against any Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of renewal or augmentation of military supplies or arms, or the recruitment of men.

Thirdly, to exercise due diligence in its own ports

and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

Her Britannic Majesty has commanded her High Commissioners and Plenipotentiaries to declare that Her Majesty's Government cannot assent to the foregoing rules as a statement of principles of international law which were in force at the time when the claims mentioned in Article I arose, but that Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries, and of making satisfactory provision for the future, agrees that in deciding the questions between the two countries arising out of those claims, the Arbitrators should assume that Her Majesty's Government had undertaken to act upon the principles set forth in these rules.

And the high contracting parties agree to observe these rules as between themselves in future, and to bring them to the knowledge of other maritime Powers, and to invite them to accede to them.

ART. VII. . . . The said tribunal shall first determine as to each vessel separately whether Great Britain has, by any act or omission, failed to fulfil any of the duties set forth in the foregoing three rules, or recognized by the principles of international law not inconsistent with such rules. . . . In case the tribunal find that Great Britain has failed to fulfil any duty or duties as aforesaid, it may, if it think proper, proceed to award a sum in gross to be paid by Great Britain to the United States for all the claims referred to it. . . .

## 27. THE GENERAL AMNESTY ACT, 1872

[This Act, passed on 22 May 1872, removed all the political disabilities imposed by the Fourteenth Amendment, with certain exceptions. Further amnesty Acts were passed by Congress freeing individual Confederate leaders, but the

final Act removing all political disabilities was not passed until 6 June 1898.]

*An Act to remove Political Disabilities imposed by the Fourteenth Article of the Amendments of the Constitution of the United States.*

*Be it enacted . . .* (two-thirds of each House concurring therein), That all political disabilities imposed by the third section of the fourteenth article of amendments of the Constitution of the United States are hereby removed from all persons whomsoever, except Senators and Representatives of the thirty-sixth and thirty-seventh Congresses, officers in the judicial, military, and naval service of the United States, heads of departments, and foreign ministers of the United States.

## 28. THE CRIME OF '73 (COINAGE ACT, 1873)

[During the period after the Civil War there developed in the United States a great struggle between the supporters of a rigid Governmental policy on the money question and those who favoured 'easy money.' The United States was a bimetallist country until 1873. Then the extraordinary increase in the production of silver and the example of European countries in adopting a gold standard caused Congress also to demonetize silver. This was done by means of a Coinage Act from which any provision for the coinage of silver dollars was omitted.

Especially during times of economic distress there was a demand for the free and unlimited coinage of silver, particularly from the agricultural interests of the South and Middle West, and, naturally, from the silver-mining interests. The Coinage Act of 1873 was regarded as a trick, and stigmatized as the Crime of '73. The issue led eventually to the great electoral battle of 1896 (see No. 48).]

*An Act revising and amending the Laws relative to the Mints, Assay-offices, and Coinage of the United States.*

SEC. 14. That the gold coins of the United States shall be a one-dollar piece, which, at the standard weight of twenty-five and eight-tenths grains, shall be the unit of value; a quarter-eagle, or two-and-a-half dollar piece; a three-dollar piece; a half-eagle, or five-dollar piece; an eagle, or ten-dollar piece; and a double eagle, or twenty-dollar piece . . . ; which coins shall be a legal tender in all payments at their nominal value when not below the standard weight and limit of tolerance provided in this Act for the single piece, and, when reduced in weight, below said standard and tolerance, shall be a legal tender at valuation in proportion to their actual weight. . . .

SEC. 15. That the silver coins of the United States shall be a trade-dollar, a half-dollar, or fifty-cent piece, a quarter-dollar, or twenty-five-cent piece, a dime, or ten-cent piece; . . . and said coins shall be a legal tender at their nominal value for any amount not exceeding five dollars in any one payment.

SEC. 16. That the minor coins of the United States shall be a five-cent piece, a three-cent piece, and a one-cent piece . . . ; which coins shall be a legal tender, at their nominal value, for any amount not exceeding twenty-five cents in any one payment.

SEC. 17. That no coins, either of gold, silver, or minor coinage, shall hereafter be issued from the mint other than those of the denominations, standards, and weights herein set forth.

## 29. THE SLAUGHTER HOUSE CASES, 1875

[In 1869 the legislature of Louisiana, 'undoubtedly under the influence of bribery and corruption,' but ostensibly in the interests of the health of the people of New Orleans, had granted a monopoly to a slaughter house company in the city for twenty-five years, depriving thereby over one thousand persons of the right to engage in that business. The statute granting the privilege was challenged on the ground that it violated the Fourteenth Amendment, and the decision is of the greatest importance as it was one of the first interpretations of the vital first section of that Amendment. The appellants claimed that the statute deprived them of their property 'without due process of law,' and that it denied to them the 'equal protection of the laws.'

The court held that the statute did not in fact violate the Amendment, which, in defining a citizen of the United States, did not add any privileges to those owned by such citizens before its adoption; that only such rights as owed their existence to the Federal Government, or its laws, or the Constitution, were by the Amendment placed under the protection of the National Government, and that the Amendment did not bring within the jurisdiction of the Supreme Court all the civil rights which had previously belonged to the States. This decision did much to preserve the so-called 'Police power' of a State, enabling it to control private property in the interest of public health or morals. Very little attention was paid to the phrase in the Fourteenth Amendment about 'due process of law.'

The dissenting opinion held that the decision of the Court had made of the Amendment 'a vain and idle enactment which accomplished nothing,' and later judgments were to show that the court was prepared to take the Fourteenth Amendment a good deal more seriously.]

MILLER, J. . . . The plaintiffs in error . . . allege that the statute is a violation of the Constitution of the United States in these several particulars:

That it creates an involuntary servitude forbidden by the Thirteenth Article of Amendment;

That it abridges the privileges and immunities of citizens of the United States;

That it denies to the plaintiffs the equal protection of the laws; and,

That it deprives them of their property without due process of law; contrary to the provisions of the first section of the Fourteenth Article of Amendment.

This court is thus called upon for the first time to give construction of these articles. . . .

Twelve articles of amendment were added to the Federal Constitution soon after the original organization of the government under it in 1789. . . . Within the last eight years three other articles of amendment of vast importance have been added by the voice of the people to that now venerable instrument.

The most cursory glance at these articles discloses a unity of purpose, when taken in connection with the history of the times, which cannot fail to have an important bearing on any question of doubt concerning their true meaning. Nor can such doubts, when any reasonably exist, be safely and rationally solved without a reference to that history; for in it is found the occasion and the necessity for recurring again to the great source of power in this country, the people of the States, for additional guarantees of human rights; additional powers to the Federal Government; additional restraints upon those of the States. . . .

We repeat, then, in the light of this recapitulation of events, almost too recent to be called history, but which are familiar to us all; and on the most casual examination of the language of these amendments, no one can fail to be impressed with the one pervading purpose found in them all, lying at the foundation of each, and without which none of them would have been even suggested; we mean the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly-made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him. It is true that only the Fifteenth Amendment, in terms, mentions the negro

by speaking of his color and his slavery. But it is just as true that each of the other articles was addressed to the grievances of that race, and designed to remedy them as the Fifteenth.

We do not say that no one else but the negro can share in this protection. Both the language and spirit of these articles are to have their fair and just weight in any question of construction. Undoubtedly while negro slavery alone was in the mind of the Congress which proposed the thirteenth article, it forbids any other kind of slavery, now or hereafter. If Mexican peonage or the Chinese coolie labor system shall develop slavery of the Mexican or Chinese race within our territory, this amendment may safely be trusted to make it void. And so if other rights are assailed by the States which properly and necessarily fall within the protection of these articles, that protection will apply, though the party interested may not be of African descent. But what we do say, and what we wish to be understood is, that in any fair and just construction of any section or phrase of these amendments, it is necessary to look to the purpose which we have said was the pervading spirit of them all, the evil which they were designed to remedy, and the process of continued addition to the Constitution, until that purpose was supposed to be accomplished, as far as constitutional law can accomplish it.

The first section of the fourteenth article, to which our attention is more specially invited, opens with a definition of citizenship—not only citizenship of the United States, but citizenship of the States. No such definition was previously found in the Constitution, nor had any attempt been made to define it by Act of Congress. . . . It had been said by eminent judges that no man was a citizen of the United States, except as he was a citizen of one of the States composing the Union. Those, therefore, who had been born and resided always in the District of Columbia or in the Territories, though within the United States, were not citizens. Whether this proposition was sound or not had never been judicially decided. But it had been held by this court, in the

celebrated *Dred Scott* case, only a few years before the outbreak of the Civil War, that a man of African descent, whether a slave or not, could not be a citizen of a State or of the United States. This decision, while it met the condemnation of some of the ablest statesmen and constitutional lawyers of the country, had never been overruled; and if it was to be accepted as a constitutional limitation of the right of citizenship, then all the negro race who had recently been made freemen, were still, not only not citizens, but were incapable of becoming so by anything short of an amendment to the Constitution.

To remove this difficulty primarily, and to establish a clear and comprehensive definition of citizenship which should declare what should constitute citizenship of the United States, and also citizenship of a State, the first clause of the first section was framed.

‘All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.’ . . .

It is quite clear, then, that there is a citizenship of the United States, and a citizenship of a State, which are distinct from each other, and which depend upon different characteristics or circumstances in the individual.

We think this distinction and its explicit recognition in this amendment of great weight in this argument, because the next paragraph of this same section, which is the one mainly relied on by the plaintiffs in error, speaks only of privileges and immunities of citizens of the United States, and does not speak of those of citizens of the several States. The argument, however, in favor of the plaintiffs rests wholly on the assumption that the citizenship is the same, and the privileges and immunities guaranteed by the clause are the same.

The language is, ‘No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the *United States*.’ It is a little remarkable, if this clause was intended as a protection to the citizen of a State against the legislative power of his own State, that the word citizen of the State should be left out when

it is so carefully used, and used in contradistinction to citizens of the United States, in the very sentence which precedes it. It is too clear for argument that the change in phraseology was adopted understandingly and with a purpose.

Of the privileges and immunities of the citizen of the United States, and of the privileges and immunities of the citizen of the State, and what they respectively are, we will presently consider; but we wish to state here that it is only the former which are placed by this clause under the protection of the Federal Constitution, and that the latter, whatever they may be, are not intended to have any additional protection by this paragraph of the amendment.

If, then, there is a difference between the privileges and immunities belonging to a citizen of the United States as such, and those belonging to the citizen of the State as such, the latter must rest for their security and protection where they have heretofore rested; for they are not embraced by this paragraph of the amendment.

The first occurrence of the words 'privileges and immunities' in our constitutional history is to be found in the fourth of the Articles of the old Confederation. . . .

In the Constitution of the United States, which superseded the Articles of Confederation, the corresponding provision is found in section two of the fourth article, in the following words: 'The citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States.'

There can be but little question that the purpose of both these provisions is the same, and that the privileges and immunities intended are the same in each. In the Articles of the Confederation we have some of these specifically mentioned, and enough perhaps to give some general idea of the class of civil rights meant by the phrase.

Fortunately we are not without judicial construction of this clause of the Constitution. . . .

The constitutional provision there alluded to did not

create those rights, which it called privileges and immunities of citizens of the States. It threw around them in that clause no security for the citizens of the State in which they were claimed or exercised. Nor did it profess to control the power of the State governments over the rights of its own citizens.

Its sole purpose was to declare to the several States, that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other States within your jurisdiction. . . . But with the exception of . . . a few . . . restrictions, the entire domain of the privileges and immunities of citizens of the States, as above defined, lay within the constitutional and legislative power of the States, and without that of the Federal Government. Was it the purpose of the Fourteenth Amendment, by the simple declaration that no State should make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, to transfer the security and protection of all the civil rights which we have mentioned, from the States to the Federal Government? And where it is declared that Congress shall have the power to enforce that article, was it intended to bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the States?

All this and more must follow, if the proposition of the plaintiffs in error be sound. For not only are these rights subject to the control of Congress whenever in its discretion any of them are supposed to be abridged by State legislation, but that body may also pass laws in advance, limiting and restricting the exercise of legislative power by the States, in their most ordinary and usual functions, as in its judgment it may think proper on all such subjects. And still further, such a construction, followed by the reversal of the judgments of the Supreme Court of Louisiana in these cases, would constitute this court a perpetual censor upon all legislation of the States, on the civil rights of their own

citizens, with authority to nullify such as it did not approve as consistent with those rights, as they existed at the time of the adoption of this amendment. The argument, we admit, is not always the most conclusive which is drawn from the consequences urged against the adoption of a particular construction of an instrument. But when, as in the case before us, these consequences are so serious, so far-reaching and pervading, so great a departure from the structure and spirit of our institutions: when the effect is to fetter and degrade the State governments by subjecting them to the control of Congress, in the exercise of powers heretofore universally conceded to them of the most ordinary and fundamental character; when in fact it radically changes the whole theory of the relations of the State and Federal Governments to each other and of both these governments to the people; the argument has a force that is irresistible, in the absence of language which expresses such a purpose too clearly to admit of doubt.

We are convinced that no such results were intended by the Congress which proposed these amendments, nor by the legislatures of the States which ratified them.

Having shown that the privileges and immunities relied on in the argument are those which belong to citizens of the States as such, and that they are left to the State governments for security and protection, and not by this article placed under the special care of the Federal Government, we may hold ourselves excused from defining the privileges and immunities of citizens of the United States which no State can abridge, until some case involving those privileges may make it necessary to do so. . . .

But it is useless to pursue this branch of the inquiry, since we are of opinion that the rights claimed by these plaintiffs in error, if they have any existence, are not privileges and immunities of citizens of the United States within the meaning of the clause of the Fourteenth Amendment under consideration. . . .

The argument has not been much pressed in these cases that the defendant's charter deprives the plaintiff

of their property without due process of law, or that it denies to them the equal protection of the law. The first of these paragraphs has been in the Constitution since the adoption of the Fifth Amendment, as a restraint upon the federal power. It is also to be found in some form of expression in the constitutions of nearly all the States, as a restraint upon the power of the States. This law, then, has practically been the same as it now is during the existence of the government, except so far as the present amendment may place the restraining power over the States in this matter in the hands of the Federal Government.

We are not without judicial interpretation, therefore, both State and national, of the meaning of this clause. And it is sufficient to say that under no construction of that provision that we have ever seen, or any that we deem admissible, can the restraint imposed by the State of Louisiana upon the exercise of their trade by the butchers of New Orleans be held to be a deprivation of property within the meaning of that provision.

‘Nor shall any State deny to any person within its jurisdiction the equal protection of the laws.’

In the light of the history of these amendments, and the pervading purpose of them, which we have already discussed, it is not difficult to give a meaning to this clause. The existence of laws in the States where the newly emancipated negroes resided, which discriminated with gross injustice and hardship against them as a class, was the evil to be remedied by this clause, and by it such laws are forbidden.

If, however, the States did not conform their laws to its requirements, then by the fifth section of the article of amendment Congress was authorized to enforce it by suitable legislation. We doubt very much whether any action of a State not directed by way of discrimination against the negroes as a class, or on account of their race, will ever be held to come within the purview of this provision. It is so clearly a provision for that race and that emergency, that a strong case would be necessary for its application to any other. But as it is a State

that is to be dealt with, and not alone the validity of its laws, we may safely leave that matter until Congress shall have exercised its power, or some case of State oppression, by denial of equal justice in its courts, shall have claimed a decision at our hands. We find no such case in the one before us, and do not deem it necessary to go over the argument again, as it may have relation to this particular clause of the amendment. . . .

### 30. THE CIVIL RIGHTS ACT, 1875

[This Act was an attempt to secure social equality for the negroes. It failed almost entirely in its purpose. In the *Civil Rights* cases, in 1883, the Supreme Court held that the rights which the Act protected were social rather than civil, and that the Federal Government had no jurisdiction over these matters. This Act and its failure marks the end of the attempt by the Federal Government to protect the freedmen of the Southern States.]

#### *An Act to protect all citizens in their civil and legal rights*

Whereas it is essential to just government we recognize the equality of all men before the law, and hold that it is the duty of government in its dealings with the people to mete out equal and exact justice to all, of whatever nativity, race, color, or persuasion, religious or political; and it being the appropriate object of legislation to enact great fundamental principles into law: Therefore,

*Be it enacted*, That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to

citizens of every race and color, regardless of any previous condition of servitude.

SEC. 2. That any person who shall violate the foregoing section by denying to any citizen, except for reasons by law applicable to citizens of every race and color, and regardless of any previous condition of servitude, the full enjoyment of any of the accommodations, advantages, facilities, or privileges in said section enumerated, or by aiding or inciting such denial, shall, for every such offense, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered in an action of debt with full costs, and shall also, for every such offense, be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred nor more than one thousand dollars, or shall be imprisoned not less than thirty days nor more than one year. . . .

SEC. 3. That the district and circuit courts of the United States shall have, exclusively of the courts of the several States, cognizance of all crimes and offenses against, and violations of, the provisions of this Act. . . .

SEC. 4. That no citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State, on account of race, color, or previous condition of servitude; and any officer or other person charged with any duty in the selection or summoning of jurors who shall exclude or fail to summon any citizen for the cause aforesaid shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not more than five thousand dollars. . . .

## 31. THE ELECTION OF 1876

[The Presidential Election of 1876 was the closest in the history of the United States except that of 1800, and in other ways significant. The most probable Republican candidate seemed to be James G. Blaine, Senator for Maine, a politician with a large and devoted following. However, while Speaker of the House of Representatives, Blaine had been implicated in a financial scandal and the Republican Convention eventually chose a 'dark horse,' Governor Hayes of Ohio. The Democrats chose Governor Tilden of New York, an eminent reformer. When the votes were counted it appeared that the issue lay with four States, from which conflicting returns had been sent in. An electoral commission was set up by Congress, consisting of seven Republicans, seven Democrats, and a Justice of the Supreme Court named Bradley. The vote was on strict party lines, and Bradley, who changed his mind the night before the decision, in fact gave the verdict in all four States to Hayes, who was, therefore, elected by one electoral vote.

Robert Ingersoll's speech in the Republican Convention in favour of Blaine is a superb example of National Convention oratory. But although it was unsuccessful in its main object, it set the note of the Republican campaign, a great attack on the Democrats as the party of the rebel Confederates, 'waving the bloody shirt' as it was called. (Andersonville and Libby were prison camps during the Civil War where the Federal prisoners were supposed to have been starved.) Ingersoll's speech during the campaign at Indianapolis, a famous example of American oratory, repeated the charge and spoke openly of the danger of 'the Solid South.'

Although the Democrats were defeated by the narrowest of margins, the election marks a turn in their fortunes. The South remained solid for that party until Coolidge carried Texas for the Republicans in 1924 and Hoover several Southern States in 1928. If the Republican party were split or if a great issue divided the North and West, the Democrats now had a chance to win the election. Tilden had had a popular majority of a quarter of a million. In 1880 the Republican majority was only seven thousand and in 1884 the first Democrat was elected President since 1856.]

*(a) R. G. Ingersoll's Speech in favour of James G. Blaine at the Republican Convention at Cincinnati, 15 June 1876*

. . . The Republicans of the United States demand a man who knows that prosperity and resumption, when they come, must come together; that when they come they will come hand in hand through the golden harvest fields; hand in hand by the whirling spindles and turning wheels; hand in hand past the open furnace doors; hand in hand by the flaming forges; hand in hand by the chimneys filled with eager fire—greeted and grasped by the countless sons of toil.

This money has to be dug out of the earth. You cannot make it by passing resolutions in a political convention.

The Republicans of the United States want a man who knows that this government should protect every citizen at home and abroad; who knows that any government that will not defend its defenders and protect its protectors is a disgrace to the map of the world. They demand a man who believes in the eternal separation and divorce of church and school. They demand a man whose political reputation is spotless as a star; but they do not demand that their candidate shall have a certificate of moral character signed by a Confederate Congress. The man who has in full, heaped and rounded measure, all these splendid qualifications is the present grand and gallant leader of the Republican party—James G. Blaine.

Our country, crowned with the vast and marvelous achievements of its first century, asks for a man worthy of the past and prophetic of her future; asks for a man who has the audacity of genius; asks for a man who is the grandest combination of heart, conscience, and brain beneath her flag. Such a man is James G. Blaine.

For the Republican host, led by this intrepid man, there can be no defeat.

This is a grand year; a year filled with the recollec-

tions of the Revolution, filled with proud and tender memories of the past, with the sacred legends of liberty; a year in which the sons of freedom will drink from the fountains of enthusiasm; a year in which the people call for a man who has preserved in Congress what our soldiers won upon the field; a year in which we call for the man who has torn from the throat of treason the tongue of slander—for the man who has snatched the mask of Democracy from the hideous face of Rebellion—for the man who, like an intellectual athlete, has stood in the arena of debate and challenged all comers, and who, up to the present moment, is a total stranger to defeat.

Like an armed warrior, like a plumed knight, James G. Blaine marched down the halls of the American Congress and threw his shining lance full and fair against the brazen foreheads of the defamers of his country and the maligners of his honor. For the Republicans to desert this gallant leader now is as though an army should desert their general upon the field of battle.

James G. Blaine is now, and has been for years, the bearer of the sacred standard of the Republican party. I call it sacred, because no human being can stand beneath its folds without becoming and without remaining free.

Gentlemen of the convention, in the name of the great Republic, the only republic that ever existed upon this earth; in the name of all her defenders and of all her supporters; in the name of all her soldiers living; in the name of all her soldiers dead upon the field of battle; and in the name of those who perished in the skeleton clutch of famine at Andersonville and Libby, whose sufferings he so vividly remembers, Illinois—Illinois nominates for the next President of this country that prince of parliamentarians, that leader of leaders, James G. Blaine.

*(b) R. G. Ingersoll's Speech at Indianapolis,  
September 1876*

. . . Every State that seceded from the Union was a Democratic State. Every ordinance of secession that was drawn was drawn by a Democrat. Every man that endeavored to tear the old flag from the heaven it enriches was a Democrat. Every man that tried to destroy the Nation was a Democrat. . . . Every man that shot down Union soldiers was a Democrat. . . . The man that assassinated Abraham Lincoln was a Democrat. . . . Every man that raised bloodhounds to pursue human beings was a Democrat. Every man that clutched from shrinking, shuddering, crouching mothers, babes from their breasts and sold them into slavery was a Democrat. . . . Every man that tried to spread smallpox and yellow fever in the North . . . was a Democrat. Soldiers, every scar you have on your heroic bodies was given you by a Democrat. Every scar, every arm that is missing, every limb that is gone is the souvenir of a Democrat. . . . Shall the solid South, a unified South, unified by assassination and murder, a South solidified by the shotgun—shall the solid South with the aid of a divided North control this great and splendid country?

The past rises before me like a dream. Again we are in the great struggle for national life. We hear the sounds of preparation; the music of boisterous drums; the silver voices of heroic bugles. We see thousands of assemblages, and hear the appeals of orators. We see the pale cheeks of women and the flushed faces of men; and in those assemblages we see all the dead whose dust we have covered with flowers. We lose sight of them no more. We are with them when they enlist in the great army of freedom. We see them part with those they love. Some are walking for the last time in quiet, woody places with the maidens they adore. We hear the whisperings and the sweet vows of eternal love as they lingeringly part forever. Others are bending over cradles, kissing babes that are asleep. Some are receiving the blessings of old men. Some

are parting with mothers who hold them and press them to their hearts again and again and say nothing. Kisses and tears, tears and kisses—divine mingling of agony and love! And some are talking with wives, and endeavoring with brave words, spoken in the old tones, to drive from their hearts the awful fear. We see them part. We see the wife standing in the door with the babe in her arms—standing in the sunlight, sobbing. At the turn in the road a hand waves—she answers by holding high in her loving arms the child. He is gone, and forever.

We see them all as they march proudly away under the flaunting flags, keeping time to the grand, wild music of war—marching down the streets of the great cities, through the towns and across the prairies, down to the fields of glory, to do and to die for the eternal right.

We go with them, one and all. We are by their side on all the gory fields, in all the hospitals of pain, on all the weary marches. We stand guard with them in the wild storm and under the quiet stars. We are with them in ravines running with blood, in the furrows of old fields. We are with them between contending hosts, unable to move, wild with thirst, the life ebbing slowly away among the withered leaves. We see them pierced by balls and torn with shells, in the trenches, by forts, and in the whirlwind of the charge, where men become iron, with nerves of steel.

We are with them in the prisons of hatred and famine; but human speech can never tell what they endured.

We are at home when the news comes that they are dead. We see the maiden in the shadow of her first sorrow. We see the silvered head of the old man bowed with the last grief.

The past rises before us and we see four millions of human beings governed by the lash; we see them bound hand and foot; we hear the strokes of cruel whips; we see the hounds tracking women through tangled swamps. We see babes sold from the breasts of mothers. Cruelty unspeakable! Outrage infinite!

Four million bodies in chains! Four million souls in fetters! All the sacred relations of wife, mother, father, and child trampled beneath the brutal feet of might. And all this was done under our own beautiful banner of the free.

The past rises before us. We hear the roar and shriek of the bursting shell. The broken fetters fall. These heroes died. We look. Instead of slaves, we see men and women and children. The wand of progress touches the auction block, the slave pen, the whipping post, and we see homes and firesides and schoolhouses and books, and where all was want and crime and cruelty and fear, we see the faces of the free.

These heroes are dead. They died for liberty, they died for us. They are at rest. They sleep in the land they made free, under the flag they rendered stainless, under the solemn pines, the sad hemlock, the tearful willows, and the embracing vines. They sleep beneath the shadows of the clouds, careless alike of sunshine or of storm, each in the windowless Palace of Rest. Earth may run red with other wars; they are at peace. In the midst of battle, in the roar of conflict, they found the serenity of death. I have one sentiment for soldiers living and dead: Cheers for the living, tears for the dead. . . .

### 32. MUNN *v.* ILLINOIS, 1876

[The agricultural depression of the early seventies led to a political revolt among the farmers of the Middle West, known as the 'Granger' movement. They agitated, in particular, for regulation by State legislatures of railroad and warehouse rates. The new Constitution of Illinois in 1870 had required the Legislature to enact laws 'for the protection of producers, shippers, and receivers of grain and produce,' and a statute of 1871 had fixed the maximum charges for storing grain in the elevators and public warehouses. A case under this statute was brought before the Supreme Court in

1876, and the appellant claimed that it was invalid, as being contrary to the section of the Constitution conferring on Congress rather than on the States the power 'to regulate commerce . . . among the several States,' and to the first section of the Fourteenth Amendment.

It was the decision as to the latter claim which was particularly important. Chief Justice Waite, in his judgment, held that 'when private property is affected with a public interest it ceases to be *juris privati* only,' and that 'property does become clothed with a public interest when used in a manner to make it of public consequence and affect the community at large.' The grain-elevator business was 'a business in which the whole public has a direct and positive interest,' and was therefore one which might properly come under the control exercised by the statute. This, and other contemporary decisions of a similar nature, 'inaugurated,' it has been said, 'the period of public regulation of public utilities.]

WAITE, C.J. The question to be determined in this case is whether the general assembly of Illinois can, under the limitations upon the legislative powers of the States imposed by the Constitution of the United States, fix by law the maximum of charges for the storage of grain in warehouses at Chicago and other places in the State having not less than one hundred thousand inhabitants, 'in which grain is stored in bulk, and in which the grain of different owners is mixed together, or in which grain is stored in such a manner that the identity of different lots or parcels cannot be accurately preserved.'

It is claimed that such a law is repugnant—

1. To that part of sect. 8, art. I, of the Constitution of the United States which confers upon Congress the power 'to regulate commerce with foreign nations and among the several States';

2. To that part of sect. 9 of the same article which provides that 'no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another'; and

3. To that part of amendment 14 which ordains that no State shall 'deprive any person of life, liberty,

or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.'

We will consider the last of these objections first. . . .

The Constitution contains no definition of the word 'deprive,' as used in the Fourteenth Amendment. To determine its signification, therefore, it is necessary to ascertain the effect which usage has given it when employed in the same or a like connection.

While this provision of the amendment is new in the Constitution of the United States as a limitation upon the powers of the States, it is old as a principle of civilized government. It is found in *Magna Charta*, and, in substance if not in form, in nearly or quite all the constitutions that have been from time to time adopted by the several States of the Union. By the Fifth Amendment it was introduced into the Constitution of the United States as a limitation upon the powers of the national government, and by the Fourteenth as a guarantee against any encroachment upon an acknowledged right of citizenship by the legislatures of the States.

When the people of the United Colonies separated from Great Britain they changed the form but not the substance of their government. They retained for the purposes of government all the powers of the British Parliament, and through their State constitutions, or other forms of social compact, undertook to give practical effect to such as they deemed necessary for the common good and the security of life and property. All the powers which they retained they committed to their respective States, unless in express terms or by implication reserved to themselves. Subsequently, when it was found necessary to establish a national government for national purposes, a part of the powers of the States and of the people of the States was granted to the United States and the people of the United States. This grant operated as a further limitation upon the powers of the States, so that now the governments of the States possess all the powers of the Parliament of

England, except such as have been delegated to the United States or reserved by the people. The reservations by the people are shown in the prohibitions of the constitutions.

When one becomes a member of society he necessarily parts with some rights or privileges which, as an individual not affected by his relations to others, he might retain. 'A body politic,' as aptly defined in the preamble of the constitution of Massachusetts, 'is a social compact by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good.' This does not confer power upon the whole people to control rights which are purely and exclusively private; but it does authorize the establishment of laws requiring each citizen to so conduct himself, and so use his own property, as not unnecessarily to injure another. This is the very essence of government, and has found expression in the maxim *sic utere tuo ut alienum non laedas*. From this source come the police powers, which, as was said by Mr Chief Justice Taney in the License Cases, 'are nothing more or less than the powers of government inherent in every sovereignty, . . . that is to say, . . . the power to govern men and things.' Under these powers the government regulates the conduct of its citizens one towards another, and the manner in which each shall use his own property, when such regulation becomes necessary for the public good. In their exercise it has been customary in England from time immemorial, and in this country from its first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, innkeepers, etc., and in so doing to fix a maximum of charge to be made for services rendered, accommodations furnished, and articles sold. To this day, statutes are to be found in many of the States upon some or all these subjects; and we think it has never yet been successfully contended that such legislation came within any of the constitutional prohibitions against interference with private property. With the

Fifth Amendment in force, Congress, in 1820, conferred power upon the city of Washington 'to regulate . . . the rates of wharfage at private wharves, . . . the sweeping of chimneys, and to fix the rates of fees therefor, . . . and the weight and quality of bread'; and, in 1848, 'to make all necessary regulations respecting hackney carriages and the rates of fare of the same, and the rates of hauling by cartmen, wagoners, carmen, and draymen, and the rates of commission of auctioneers.'

From this it is apparent that, down to the time of the adoption of the Fourteenth Amendment, it was not supposed that statutes regulating the use, or even the price of the use, of private property necessarily deprived an owner of his property without due process of law. Under some circumstances they may, but not under all. The amendment does not change the law in this particular: it simply prevents the States from doing that which will operate as such a deprivation.

This brings us to inquire as to the principles upon which this power of regulation rests, in order that we may determine what is within and what without its operative effect. Looking, then, to the common law, from whence came the right which the Constitution protects, we find that when private property is 'affected with a public interest, it ceases to be *juris privati* only.' This was said by Lord Chief Justice Hale more than two hundred years ago, in his treatise *De Portibus Maris*, and has been accepted without objection as an essential element in the law of property ever since. Property does become clothed with a public interest when used in a manner to make it of public consequence and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control. . . .

Common carriers exercise a sort of public office and

have duties to perform in which the public is interested. Their business is, therefore, 'affected with a public interest,' within the meaning of the doctrine which Lord Hale has so forcibly stated.

But we need not go further. Enough has already been said to show that, when private property is devoted to a public use, it is subject to public regulation. It remains only to ascertain whether the warehouses of these plaintiffs in error, and the business which is carried on there, come within the operation of this principle.

For this purpose we accept as true the statements of fact contained in the elaborate brief of one of the plaintiffs in error. . . .

In this connection it must also be borne in mind that, although in 1874 there were in Chicago fourteen warehouses adapted to this particular business, and owned by about thirty persons, nine business firms controlled them, and that the prices charged and received for storage were such 'as have been from year to year agreed upon and established by the different elevators or warehouses in the city of Chicago, and which rates have been annually published in one or more newspapers printed in said city, in the month of January in each year, as the established rates for the year then next ensuing such publication.' Thus it is apparent that all the elevating facilities through which these vast productions 'of seven or eight great States of the West' must pass on the way 'to four or five of the States on the sea-shore' may be a 'virtual' monopoly.

Under such circumstances it is difficult to see why, if the common carrier, or the miller, or the ferryman, or the innkeeper, or the wharfinger, or the baker, or the cartman, or the hackney-coachman, pursues a public employment and exercises 'a sort of public office,' these plaintiffs in error do not. They stand, to use again the language of their counsel, in the very 'gateway of commerce,' and take toll from all who pass. Their business most certainly 'tends to a common charge, and is become a thing of public interest and use.' . . . Certainly, if any business can be clothed

'with a public interest and cease to be *juris privati* only,' this has been. It may not be made so by the operation of the constitution of Illinois or this statute, but it is by the facts.

We also are not permitted to overlook the fact that, for some reason, the people of Illinois, when they revised their Constitution in 1870, saw fit to make it the duty of the general assembly to pass laws 'for the protection of producers, shippers, and receivers of grain and produce,' art. 13, sect. 7; and by sect. 5 of the same article, to require all railroad companies receiving and transporting grain in bulk or otherwise to deliver the same at any elevator to which it might be consigned, that could be reached by any track that was or could be used by such company, and that all railroad companies should permit connections to be made with their tracks, so that any public warehouse, etc., might be reached by the cars on their railroads. This indicates very clearly that during the twenty years in which this peculiar business had been assuming its present 'immense proportions' something had occurred which led the whole body of the people to suppose that remedies such as are usually employed to prevent abuses by virtual monopolies might not be inappropriate here.

For our purposes we must assume that if a state of facts could exist that would justify such legislation, it actually did exist when the statute now under consideration was passed. For us the question is one of power, not of expediency. If no state of circumstances could justify such a statute, then we may declare this one void, because in excess of the legislative power of the State. But if it could we must presume it did. Of the propriety of legislative interference within the scope of legislative power, the legislature is the exclusive judge.

Neither is it a matter of any moment that no precedent can be found for a statute precisely like this. It is conceded that the business is one of recent origin, that its growth has been rapid, and that it is already of great importance. And it must also be conceded that it is

a business in which the whole public has a direct and positive interest. It presents, therefore, a case for the application of a long-known and well-established principle in social science, and this statute simply extends the law so as to meet this new development of commercial progress. There is no attempt to compel these owners to grant the public an interest in their property, but to decline their obligations, if they use it in this particular manner.

It matters not in this case that these plaintiffs in error had built their warehouses and established their business before the regulations complained of were adopted. What they did was from the beginning subject to the power of the body politic to require them to conform to such regulations as might be established by the proper authorities for the common good. They entered upon their business and provided themselves with the means to carry it on subject to this condition. If they did not wish to submit themselves to such interference, they should not have clothed the public with an interest in their concerns. The same principle applies to them that does to the proprietor of a hackney-carriage, and as to him it has never been supposed that he was exempt from regulating statutes or ordinances because he had purchased his horses and carriage and established his business before the statute or the ordinance was adopted.

It is insisted, however, that the owner of property is entitled to a reasonable compensation for its use, even though it be clothed with a public interest, and that what is reasonable is a judicial and not a legislative question.

As has already been shown, the practice has been otherwise. In countries where the common law prevails, it has been customary from time immemorial for the legislature to declare what shall be a reasonable compensation under such circumstances, or perhaps more properly speaking, to fix a maximum beyond which any charge made would be unreasonable. Undoubtedly in mere private contracts, relating to matters

in which the public has no interest, what is reasonable must be ascertained judicially. But this is because the legislature has no control over such a contract. So, too, in matters which do not affect the public interest, and as to which legislative control may be exercised, if there are no statutory regulations upon the subject, the courts must determine what is reasonable. The controlling fact is the power to regulate at all. If that exists, the right to establish the maximum charge, as one of the means of regulation, is implied. . . .

We know that this is a power which may be abused; but that is no argument against its existence. For protection against abuses by legislatures the people must resort to the polls, not to the courts. . . .

### 33. PREAMBLE OF THE CONSTITUTION OF THE KNIGHTS OF LABOR, 1878

[The Knights of Labor were the first large labour union in America. Most of the labour organizations, which grew up after the Civil War, were confined to the workers in one branch of trade or industry, though the National Labor Union, which lasted from 1866 to 1872, had included various labour organizations, farmers' societies, and reforming leagues and groups. The Noble Order of the Knights of Labor was founded in 1869 as a Union of garment cutters by Uriah S. Stephens in Philadelphia. It developed on a much larger scale, attempting to combine the workers of the United States in one centralized union. In 1878 Terence V. Powderly became Grand Master, and the numbers grew from under 50,000 in that year to 700,000 in 1884, in which year it was responsible for winning a great railway strike in the South-West. In 1886 the Knights of Labor helped to organize a great strike for an eight-hour day. During this contest occurred the Haymarket bomb explosion in Chicago. The Knights were certainly not responsible for this, but they suffered severely from the popular reaction, and by the end of the century the organization had practically disappeared.]

The recent alarming development and aggression of aggregated wealth, which, unless checked, will invariably lead to the pauperization and hopeless degradation of the toiling masses, render it imperative, if we desire to enjoy the blessings of life, that a check should be placed upon its power and upon unjust accumulation, and a system adopted which will secure to the laborer the fruits of his toil; and as this much-desired object can only be accomplished by the thorough unification of labor, and the united efforts of those who obey the divine injunction that 'In the sweat of thy brow shalt thou eat bread,' we have formed the \* \* \* with a view of securing the organization and direction, by co-operative effort, of the power of the industrial classes; and we submit to the world the object sought to be accomplished by our organization, calling upon all who believe in securing 'the greatest good to the greatest number' to aid and assist us:—

I. To bring within the folds of organization every department of productive industry, making knowledge a standpoint for action, and industrial and moral worth, not wealth, the true standard of individual and national good greatness.

II. To secure to the toilers a proper share of the wealth that they create; more of the leisure that rightfully belongs to them; more societary advantages; more of the benefits, privileges, and emoluments of the world; in a word, all those rights and privileges necessary to make them capable of enjoying, appreciating, defending, and perpetuating the blessings of good government.

III. To arrive at the true condition of the producing masses in their educational, moral, and financial condition, by demanding from the various governments the establishment of bureaus of Labor Statistics.

IV. The establishment of co-operative institutions, productive and distributive.

V. The reserving of the public lands—the heritage of the people—for the actual settler; not another acre for railroads or speculators.

VI. The abrogation of all laws that do not bear equally upon capital and labor, the removal of unjust technicalities, delays, and discriminations in the administration of justice, and the adopting of measures providing for the health and safety of those engaged in mining, manufacturing, or building pursuits.

VII. The enactment of laws to compel chartered corporations to pay their employes weekly, in full, for labor performed during the preceding week, in the lawful money of the country.

VIII. The enactment of laws giving mechanics and laborers a first lien on their work for their full wages.

IX. The abolishment of the contract system on national, State, and municipal work.

X. The substitution of arbitration for strikes, whenever and wherever employers and employes are willing to meet on equitable grounds.

XI. The prohibition of the employment of children in workshops, mines, and factories before attaining their fourteenth year.

XII. To abolish the system of letting out by contract the labor of convicts in our prisons and reformatory institutions.

XIII. To secure for both sexes equal pay for equal work.

XIV. The reduction of the hours of labor to eight per day, so that the laborers may have more time for social enjoyment and intellectual improvement, and be enabled to reap the advantages conferred by the labor-saving machinery which their brains have created.

XV. To prevail upon governments to establish a purely national circulating medium, based upon the faith and resources of the nation, and issued directly to the people, without the intervention of any system of banking corporations, which money shall be a legal tender in payment of all debts, public or private.

### 34. THE STANDARD OIL TRUST, 1882

[In 1859 the first oil well was constructed in Pennsylvania and a great modern industry began. In 1862 John D. Rockefeller, M. B. Clark, and Samuel Andrews set up a refinery at Cleveland, and in 1870 Rockefeller founded the Standard Oil Company. In ten years this company gained an overwhelmingly preponderant position in the American oil industry by methods which were always uncompromising and often unscrupulous. On 1 January 1882 the leading oil companies under Rockefeller's control came together to form the Standard Oil Trust, the first great American trust, under an agreement by which nine trustees held all the stock of the Standard and its subsidiary oil companies.

A trust has been defined as 'an organized association of several companies for the purpose of defeating competition, the shareholders in each transferring all or most of the stock to a central committee and losing their voting power while remaining entitled to profits.' The thirty-nine corporations which formed the Standard Oil Trust had a legal existence and were constrained by the laws of the States in which they operated. They now handed over their affairs 'to an organization having no legal existence, independent of all authority, able to do anything it wanted anywhere. Under their agreement . . . a few men had united to do things which no incorporated company could do' (Ida Tarbell, *The History of the Standard Oil Company*, ii. 136).

The Standard Oil Trust inaugurated a new era in American business history. The situation was well described in the Report on Trusts undertaken by a Committee of the Senate of New York State in 1888:

'The actual value of property in the trust control at the present time is not less than one hundred and forty-eight millions of dollars, according to the testimony of the trust's president before your committee. This sum in the hands of nine men, energetic, intelligent, and aggressive—and the trustees themselves, as has been said, own a majority of the stock of the trust which absolutely controls the one hundred and forty-eight millions of dollars—is one of the most active and possibly the most formidable moneyed power on this

continent. Its influence reaches into every State and is felt in remote villages, and the products of its refineries seek a market in almost every seaport on the globe. When it is remembered that all this vast wealth is the growth of about twenty years, that this property has more than doubled in value in six years, and that with this increase the trust has made aggregate dividends during that period of over fifty millions of dollars, the people may well look with apprehension at such rapid development and centralization of wealth wholly independent of legal control, and anxiously seek out means to modify, if not to prevent, the natural consequence of the device producing it, a device of late invention, namely, the aggregation of great corporations into partnerships with unbounded resources and a field of operations quite as extended as its resources.<sup>7</sup>

The alarm created by this development in industrial organization led to the Sherman Anti-Trust Act of 1887.]

This agreement, made and entered upon this second day of January, A.D. 1882, by and between all the persons who shall now or may hereafter execute the same as parties thereto:

*Witnesseth:* I. It is intended that the parties to this agreement shall embrace three classes, to wit:

1st. All the stockholders and members of the following corporations and limited partnerships, to wit:

Acme Oil Company, New York; Acme Oil Company, Pennsylvania; Atlantic Refining Company of Philadelphia; Bush and Company (limited); Camden Consolidated Oil Company; Elizabethport Acid Works; Imperial Refining Company (limited); Charles Pratt and Company; Paine, Abbott and Company; Standard Oil Company, Ohio; Standard Oil Company, Pittsburg; Smith's Ferry Oil Transportation Company; Solar Oil Company (limited); Sone and Fleming Manufacturing Company (limited).

Also, all the stockholders and members of such other corporations and limited partnerships as may hereafter join in this agreement, at the request of the trustees herein provided for.

2d. The following individuals, to wit:

W. C. Andrews, John D. Archbold, Lide K. Arter,

J. A. Bostwick, Benjamin Brewster, D. Bushnell, Thomas C. Bushnell, J. N. Camden, Henry L. Davis, H. M. Flagler, Mrs H. M. Flagler, John Huntington, H. A. Hutchins, Charles F. G. Heye, A. B. Jennings, Charles Lockhart, A. M. McGregor, William H. Macy, William H. Macy, Jr., estate of Josiah Macy, William H. Macy, Jr., executor, O. H. Payne, A. J. Pouch, John D. Rockefeller, William Rockefeller, Henry H. Rogers, W. P. Thompson, J. J. Vandergrift, William T. Wardwell, W. G. Warden, Joseph L. Warden, Warden, Frew and Company, Louise C. Wheaton, H. M. Hanna and George W. Chapin, D. M. Harkness, D. M. Harkness, trustee, S. V. Harkness, O. H. Payne, trustee; Charles Pratt, Horace A. Pratt, C. M. Pratt, Julia H. York, George H. Vilas, M. R. Keith, trustees, George F. Chester.

Also, all such individuals as may hereafter join in the agreement at the request of the trustees herein provided for.

3d. A portion of the stockholders and members of the following corporations and limited partnerships, to wit:

American Lubricating Oil Company; Baltimore United Oil Company; Beacon Oil Company; Bush and Denslow Manufacturing Company; Central Refining Company of Pittsburg; Cheesborough Manufacturing Company; Chess, Carley Company; Consolidated Tank Line Company; Inland Oil Company; Keystone Refining Company; Maverick Oil Company; National Transit Company; Portland Kerosene Oil Company; Producers' Consolidated Land and Petroleum Company; Signal Oil Works (limited); Thompson and Bedford Company (limited); Devoe Manufacturing Company; Eclipse Lubricating Oil Company (limited); Empire Refining Company (limited); Franklin Pipe Company (limited); Galena Oil Works (limited); Galena Farm Oil Company (limited); Germania Mining Company; Vacuum Oil Company; H. C. Van Tine and Company (limited); Waters-Pierce Oil Company.

Also, stockholders and members (not being all thereof)

of other corporations and limited partnerships who may hereafter join in this agreement at the request of the trustees herein provided for.

II. The parties hereto do covenant and agree to and with each other, each in consideration of the mutual covenants and agreements of the others, as follows:

1st. As soon as practicable a corporation shall be formed in each of the following States, under the laws thereof, to wit, Ohio, New York, Pennsylvania, New Jersey: provided, however, that instead of organizing a new corporation any existing charter and organization may be used for the purpose when it can advantageously be done.

2d. The purposes and powers of said corporations shall be to mine for, produce, manufacture, refine, and deal in petroleum and all its products, and all the materials used in such businesses, and transact other business collateral thereto. But other purposes and powers shall be embraced in the several charters such as shall seem expedient to the parties procuring the charter, or, if necessary to comply with the law, the powers aforesaid may be restricted and reduced. . . .

4th. Each of said corporations shall be known as the Standard Oil Company of (and here shall follow the name of the State or territory by virtue of the laws of which said corporation is organized). . . .

7th. All of the property, real and personal, assets and business of each and all of the corporations and limited partnerships mentioned or embraced in class first, shall be transferred to and vested in the said several Standard Oil companies. All of the property, assets, and business in or of each particular State shall be transferred to and vested in the Standard Oil Company of that particular State, and in order to accomplish such purpose the directors and managers of each and all of the several corporations and limited partnerships mentioned in class first are hereby authorized and directed by the stockholders and members thereof (all of them being parties to this agreement) to sell, assign, transfer, convey, and make over, for the consideration hereinafter

mentioned, to the Standard Oil Company or companies of the proper State or States, as soon as said corporations are organized and ready to receive the same, all the property, real and personal, assets and business of said corporations and limited partnerships. Correct schedules of such property, assets, and business shall accompany each transfer.

8th. The individuals embraced in class second of this agreement do, each for himself, agree for the consideration hereinafter mentioned to sell, assign, transfer, convey, and set over all the property, real and personal, assets and business mentioned and embraced in schedules accompanying such sale, and transfer to the Standard Oil Company or companies of the proper State or States, as soon as the said corporations are organized and ready to receive the same.

9th. The parties embraced in class third of this agreement do covenant and agree to assign and transfer all of the stock held by them in the corporations or limited partnerships herein named, to the trustees herein provided for, for the consideration and upon the terms hereinafter set forth. It is understood and agreed that the said trustees and their successors may hereafter take the assignment of stocks in the same or similar companies upon the terms herein provided, and that whenever and as often as all the stocks of any corporations or limited partnerships are vested in said trustees, the proper steps may then be taken to have all the moneys, property, real and personal, of such corporation or partnership assigned or conveyed to the Standard Oil Company, of the proper State, on the terms and in the mode herein set forth, in which event the trustees shall receive stocks of the Standard Oil companies, equal to the value of the money, property, and business assigned, to be held in place of the stocks of the company or companies assigning such property. . . .

11th. The consideration for any stocks delivered to said trustees, as above provided for, as well as for stocks delivered to said trustees by persons mentioned or included in class third of this agreement, shall be the

delivery by said trustees, to the persons entitled thereto, of trust certificates hereinafter provided for, equal at par value to the par value of the stocks of the said several Standard Oil companies so received by said trustees and equal to the appraised value of the stocks of other companies or partnerships delivered to said trustees.

The said appraised value shall be determined in a manner agreed upon by the parties in interest and said trustees.

It is understood and agreed, however, that the said trustees may, with any trust funds in their hands, in addition to the mode above provided, purchase the bonds and stocks of other companies engaged in business similar or collateral to the business of said Standard Oil companies on such terms and in such mode as they may deem advisable, and shall hold the same for the benefit of the owners of said trust certificates, and may sell, assign, transfer, and pledge such bonds and stocks whenever they may deem it advantageous to said trust so to do.

III. The trusts upon which said stock shall be held, and the number, powers, and duties of said trustees shall be as follows:

1st. The number of trustees shall be nine.

2d. J. D. Rockefeller, O. H. Payne, and William Rockefeller are hereby appointed trustees, to hold their office until the first Wednesday of April, A.D. 1885.

3d. J. A. Bostwick, H. M. Flagler, and W. G. Warden are hereby appointed trustees, to hold their office until the first Wednesday of April, A.D. 1884.

4th. Charles Pratt, Benjamin Brewster, and John Archbold are hereby appointed trustees, to hold their office until the first Wednesday of April, A.D. 1883.

5th. Elections for trustees to succeed those herein appointed shall be held annually, at which election a sufficient number of trustees shall be elected to fill all vacancies occurring either from expiration of the term of the office of trustee or from any other cause. All trustees shall be elected to hold their office for three years, except those elected to fill a vacancy arising from any

cause except expiration of term, who shall be elected for the balance of the term of the trustee whose place they are elected to fill. Every trustee shall hold his office until his successor is elected.

6th. Trustees shall be elected by ballot by the owners of trust certificates or their proxies. At all meetings the owners of trust certificates, who may be registered as such on the books of the trustees, may vote in person or by proxy, and shall have one vote for each and every share of trust certificates standing in their names, but no such owner shall be entitled to vote upon any share which has not stood in his name thirty days prior to the day appointed for the election. The transfer books may be closed for thirty days immediately preceding the annual election. A majority of the shares represented at such election shall elect. . . .

11th. The trustees shall prepare certificates which shall show the interest of each beneficiary in said trust and deliver them to the persons properly entitled thereto. They shall be divided into shares of the par value of \$100 each, and shall be known as the Standard Oil Trust certificates, and shall be issued subject to all the terms and conditions of this agreement. The trustees shall have power to agree upon and direct the form and contents of said certificates and the mode in which they shall be signed, attested, and transferred. The certificates shall contain an express stipulation that the holders thereof shall be bound by the terms of this agreement and by the by-laws herein provided for.

12th. No certificates shall be issued except for stocks and bonds held in trust as herein provided for, and the par value of certificates issued by said trustees shall be equal to the par value of the stocks of said Standard Oil Company and the appraised value of other bonds and stocks held in trust. The various bonds, stocks, and moneys held under said trust shall be held for all parties in interest jointly, and the trust certificates so issued shall be the evidence of the interest held by the several parties in this trust. No duplicate certificates shall be issued by the trustees, except upon surrender of the

original certificate or certificates for cancellation, or upon satisfactory proof of the loss thereof, and in the latter case they shall require a sufficient bond of indemnity.

13th. The stocks of the various Standard Oil companies, held in trust by said trustees, shall not be sold, assigned, or transferred by said trustees, or by the beneficiaries, or by both combined, so long as this trust endures. The stocks and bonds of other corporations held by said trustees may be by them exchanged or sold and the proceeds thereof distributed *pro rata* to the holders of trust certificates, or said proceeds may be held and reinvested by said trustees for the purposes and uses of the trust: provided, however, that said trustees may, from time to time, assign such shares of stock of said Standard Oil Company as may be necessary to qualify any person or persons chosen or to be chosen as directors and officers of any of said Standard Oil companies. . . .

15th. It shall be the duty of said trustees to exercise general supervision over the affairs of said several Standard Oil companies, and, as far as practicable, over the other companies or partnerships, any portion of whose stock is held in said trust. It shall be their duty, as stockholders of said companies, to elect as directors and officers thereof faithful and competent men. They may elect themselves to such positions when they see fit so to do, and shall endeavor to have the affairs of all of said companies managed and directed in the manner they may deem most conducive to the best interests of the holders of said trust certificates. . . .

18th. Each trustee shall be entitled to a salary for his services not exceeding \$25,000 per annum, except the president of the board, who may be voted a salary not exceeding \$30,000 per annum, which salaries shall be fixed by said board of trustees. All salaries and expenses connected with or growing out of the trust shall be paid by the trustees from the trust fund. . . .

20th. The trustees shall render at each annual meeting a statement of the affairs of the trust. If a termination of the trust be agreed upon, as hereinafter provided, or

within a reasonable time prior to its termination by a lapse of time, the trustees shall furnish to the holders of trust certificates a true and perfect inventory and appraisement of all stocks and other property held in trust, and a statement of the financial affairs of the various companies whose stocks are held in trust.

21st. This trust shall continue during the lives of the survivors and survivor of the trustees in this agreement named, and for twenty-one years thereafter: provided, however, that if, at any time after the expiration of ten years, two-thirds of all the holders in value, or if, after the expiration of one year, ninety per cent. of all the holders in value of trust certificates, shall, at a meeting of holders of trust certificates called for that purpose, vote to terminate this trust at some time to be by them then and there fixed, the said trust shall terminate at the date so fixed. If the holders of trust certificates shall vote to terminate the trust as aforesaid, they may, at the same meeting, or at a subsequent meeting called for that purpose, decide by a vote of two-thirds in value of their number the mode in which the affairs of the trust shall be wound up, and whether the trust property shall be distributed, or whether it shall be sold and the values thereof distributed: or whether part, and, if so, what part, shall be divided and what part shall be sold, and whether such sales shall be public or private.

The trustees, who shall continue to hold their offices for that purpose, shall make the distribution in the mode directed; or, if no mode be agreed upon by two-thirds in value, as aforesaid, the trustees shall make distribution of the trust property according to law. But said distribution, however made, and whether it be of property or values, or of both, shall be just and equitable, and such as to insure to each owner of a trust certificate his due proportion of the trust property, or the value thereof.

22d. If the trust shall be terminated by expiration of the time for which it is created, the distribution of the trust property shall be directed and made in the mode above provided.

23d. This agreement, together with the registry of certificates, books of accounts, and other books and papers connected with the business of said trust, shall be safely kept at the principal office of said trustees.

BENJ. BREWSTER; JNO. D. ARCHBOLD; J. A. BOSTWICK; CHAS. PRATT; HENRY H. ROGERS; H. A. PRATT; C. M. PRATT; D. M. HARKNESS, *Trustee*, by H. M. FLAGLER, *Attorney*; THOMAS C. BUSHNELL; W. C. ANDREWS, CHAS. F. G. HEYE; WILLIAM T. WARDWELL; WM. H. MACY; Estate of JOSIAH MACY, JR., WM. H. MACY, JR., *Executor*; WM. H. MACY, JR.; A. M. MCGREGOR; J. N. CAMDEN, by H. M. FLAGLER, *Attorney*; O. H. PAYNE, by H. M. FLAGLER, *Attorney*; GEO. F. CHESTER, *Trustee*; GEO. H. VILAS, *Trustee*; W. G. WARDEN; H. M. FLAGLER; JOHN D. ROCKEFELLER; WM. ROCKEFELLER; J. J. VANDERGRIFT; Mrs H. M. FLAGLER, by H. M. FLAGLER; A. J. POUCH; O. B. JENNINGS; D. M. HARKNESS, by H. M. FLAGLER, *Attorney*; W. P. THOMPSON, by H. M. FLAGLER, *Attorney*; S. V. HARKNESS, by H. M. FLAGLER, *Attorney*; JOHN HUNTINGTON, by H. M. FLAGLER, *Attorney*; LIDE K. ARTER, by H. M. FLAGLER, *Attorney*; H. M. HANNA and GEO. W. CHAPIN, by H. M. FLAGLER, *Attorney*; LOUISE C. WHEATON, by H. M. FLAGLER, *Attorney*; O. H. PAYNE, *Trustee*, by H. M. FLAGLER, *Attorney*; CHAS. LOCKHART; JOS. L. WARDEN, by HENRY L. DAVIS, *Attorney*; JULIA H. YORK, by H. M. FLAGLER, *Attorney*; H. A. HUTCHINS, by H. M. FLAGLER, *Attorney*; M. R. KEITH, *Trustee*; D. BUSHNELL; WARDEN, FREW and COMPANY; HENRY L. DAVIS.

Whereas, in and by an agreement dated 2 January 1882, and known as the Standard Trust agreement, the parties thereto did mutually covenant and agree *inter alia* as follows, to wit: That corporations to be known as Standard Oil companies of various States should be formed, and that all of the property, real and personal, assets, and business of each and all of the corporations

and limited partnerships mentioned or embraced in class first of said agreement should be transferred to and vested in the said several Standard Oil companies; that all of the property, assets, and business in or of each particular State should be transferred to and vested in the Standard Oil company of that particular State, and the directors and managers of each and all of the several corporations and associations mentioned in class first were authorized and directed to sell, assign, transfer, and convey, and make over to the Standard Oil Company or companies of the proper State or States, as soon as said corporations were organized and ready to receive the same, all the property, real and personal, assets, and business of said corporations or associations; and

*Whereas*, it is not deemed expedient that all of the companies and associations mentioned should transfer their property to the said Standard Oil companies at the present time, and in case of some companies and associations it may never be deemed expedient that the said transfers should be made and said companies and associations go out of existence; and

*Whereas*, it is deemed advisable that a discretionary power should be vested in the trustees as to when such transfer or transfers should take place, if at all. Now, it is hereby mutually agreed between the parties to the said trust agreement, and as supplementary thereto, that the trustees named in the said agreement and their successors shall have the power and authority to decide what companies shall convey their said property as in said agreement contemplated, and when the said sales and transfers shall take place, if at all; and until said trustees shall so decide, each of said companies shall remain in existence and retain its property and business, and the trustees shall hold the stocks thereof in trust as in said agreement provided. In the exercise of said discretion, the trustees shall act by a majority of their number as provided in said trust agreement. All portions of said trust agreement relating to this subject shall be considered so changed as to be in harmony with this supplemental agreement.

*In Witness Whereof*, the said parties have subscribed this agreement, this fourth day of January 1882.

BENJAMIN BREWSTER; JOHN D. ARCHIBOLD; J. A. BOSTWICK; CHARLES PRATT; HENRY H. ROGERS; H. A. PRATT; C. M. PRATT; D. M. HARKNESS, *Trustee*; D. M. HARKNESS; T. C. BUSHNELL; W. C. ANDREWS; CHARLES F. G. HEYE; WILLIAM T. WARDWELL; WILLIAM H. MACY; Estate of JOSIAH MACY, Jr., WILLIAM H. MACY, Jr., *Executor*; WILLIAM H. MACY, Jr.; A. M. McGREGOR; J. N. CAMDEN; JULIA H. YORK, by B. H. Y.; O. H. PAYNE; GEORGE F. CHESTER, *Trustee*; M. R. KEITH, *Trustee*; H. M. FLAGLER; JOHN D. ROCKEFELLER; WILLIAM ROCKEFELLER; J. J. VANDERGRIFT; Mrs H. M. FLAGLER, by H. M. FLAGLER; A. J. POUCH; O. B. JENNINGS; W. O. THOMPSON; S. V. HARKNESS, JOHN HUNTINGTON; LIDE K. ARTER; H. M. HANNA; GEORGE W. CHAPIN, H. M. HANNA, *Attorney in Fact*; LOUISE C. WHEATON, by H. M. FLAGLER; O. H. PAYNE, *Trustee*; CHARLES LOCKHART; JOSEPH L. WARDEN; HENRY L. DAVIS; W. G. WARDEN; WARDEN, FREW and COMPANY; D. BUSHNELL; H. A. HUTCHINS; GEORGE H. VILAS, *Trustee*.

### 35. THE CHINESE EXCLUSION ACT, 1882

[Until 1882 immigration into the United States was entirely unrestricted, except in so far as the separate States undertook to regulate it in their own territories. After 1850 there was a considerable immigration of Chinese labourers, principally into California, as a result of the discovery of gold and of the railway development. This led to an anti-Chinese movement and discriminatory legislation against Chinese labourers in California. In 1880 the Senate ratified a Treaty with China prohibiting the immigration of labourers

from China, though expressly permitting that of Chinese teachers, students, and merchants, and forbidding the ill-treatment of the Chinese in the United States. On 6 May 1882 Congress passed an Act to execute this treaty, forbidding Chinese immigration for ten years. The prohibition was renewed in 1890, again in 1902, and is now permanent. This Act introduced a new policy in the United States with regard to immigration.]

*An Act to execute certain treaty stipulations relating to Chinese*

Whereas, in the opinion of the Government of the United States the coming of Chinese laborers to this country endangers the good order of certain localities within the territory thereof: Therefore,

*Be it enacted*, That from and after the expiration of ninety days next after the passage of this Act, and until the expiration of ten years next after the passage of this Act, the coming of Chinese laborers to the United States be, . . . suspended; and during such suspension it shall not be lawful for any Chinese laborer to come, or, having so come after the expiration of said ninety days, to remain within the United States.

SEC. 2. That the master of any vessel who shall knowingly bring within the United States on such vessel, and land or permit to be landed, any Chinese laborer, from any foreign port or place, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than five hundred dollars for each and every such Chinese laborer so brought, and may be also imprisoned for a term not exceeding one year.

SEC. 3. That the two foregoing sections shall not apply to Chinese laborers who were in the United States on the seventeenth day of November, eighteen hundred and eighty, or who shall have come into the same before the expiration of ninety days next after the passage of this Act, . . .

SEC. 6. That in order to the faithful execution of articles one and two of the treaty in this Act before mentioned, every Chinese person other than a laborer

who may be entitled by said treaty and this Act to come within the United States, and who shall be about to come to the United States, shall be identified as so entitled by the Chinese Government in each case, such identity to be evidenced by a certificate issued under the authority of said government, which certificate shall be in the English language or (if not in the English language) accompanied by a translation into English, stating such right to come, and which certificate shall state the name, title, or official rank, if any, the age, height, and all physical peculiarities, former and present occupation or profession, and place of residence in China of the person to whom the certificate is issued and that such person is entitled conformably to the treaty in this Act mentioned to come within the United States. . . .

SEC. 12. That no Chinese person shall be permitted to enter the United States by land without producing to the proper officer of customs the certificate in this Act required of Chinese persons seeking to land from a vessel. And any Chinese person found unlawfully within the United States shall be caused to be removed therefrom to the country from whence he came, by direction of the President of the United States, and at the cost of the United States, after being brought before some justice, judge, or commissioner of a court of the United States and found to be one not lawfully entitled to be or remain in the United States.

SEC. 13. That this Act shall not apply to diplomatic and other officers of the Chinese Government travelling upon the business of that government, whose credentials shall be taken as equivalent to the certificate in this Act mentioned, and shall exempt them and their body and household servants from the provisions of this Act as to other Chinese persons.

SEC. 14. That hereafter no State court or court of the United States shall admit Chinese to citizenship; and all laws in conflict with this Act are hereby repealed.

SEC. 15. That the words 'Chinese laborers,' whenever used in this Act, shall be construed to mean both skilled and unskilled laborers and Chinese employed in mining.

## 36. THE PENDLETON ACT, 1883

[Since the Presidency of Andrew Jackson the 'Spoils System' in American politics had led to continual scandals in the civil service and it had been extended to almost every office, down to the most menial, under Federal control. Since the Civil War there had been a growing demand for reform. The Republicans, in 1880, selected as their candidate in the presidential election, General Garfield, to the disappointment of the New York bosses, then dominant in the party, who were placated by the nomination of one of their followers, Chester A. Arthur, for the Vice-Presidency. Garfield was elected, but in July 1881 he was murdered by a disappointed office-seeker. Arthur unexpectedly supported reform, and the murder of Garfield focussed public attention on the evil.

The Pendleton Civil Service Act was passed on 16 January 1883. It provided for the establishment of a Civil Service Commission to administer the appointment to offices by open competitive examinations. The new rules only applied at first to some twelve per cent. of the total number of posts, but the President was given power to extend the range, and reforming Presidents have greatly added to the list. It now covers more than half the number of Federal employees.]

### *An Act to regulate and improve the civil service of the United States*

*Be it enacted . . . ,* That the President is authorized to appoint, by and with the advice and consent of the Senate, three persons, not more than two of whom shall be adherents of the same party, as Civil Service Commissioners, and said three commissioners shall constitute the United States Civil Service Commission. Said commissioners shall hold no other official place under the United States.

SEC. 2. That it shall be the duty of said commissioners : FIRST. To aid the President, as he may request, in

preparing suitable rules for carrying this Act into effect, and when said rules shall have been promulgated it shall be the duty of all officers of the United States in the departments and offices to which any such rules may relate to aid, in all proper ways, in carrying said rules, and any modifications thereof, into effect.

SECOND. And, among other things, said rules shall provide and declare, as nearly as the conditions of good administration will warrant, as follows:

First, for open, competitive examinations for testing the fitness of applicants for the public service now classified or to be classified hereunder. Such examinations shall be practical in their character, and so far as may be shall relate to those matters which will fairly test the relative capacity and fitness of the persons examined to discharge the duties of the service into which they seek to be appointed.

Second, that all the offices, places, and employments so arranged or to be arranged in classes shall be filled by selections according to grade from among those graded highest as the results of such competitive examinations.

Third, appointments to the public service aforesaid in the departments at Washington shall be apportioned among the several States and Territories and the District of Columbia upon the basis of population as ascertained at the last preceding census. . . .

Fourth, that there shall be a period of probation before any absolute appointment or employment aforesaid.

Fifth, that no person in the public service is for that reason under any obligations to contribute to any political fund, or to render any political service, and that he will not be removed or otherwise prejudiced for refusing to do so.

Sixth, that no person in said service has any right to use his official authority or influence to coerce the political action of any person or body.

Seventh, there shall be non-competitive examinations in all proper cases before the commission, when

competent persons do not compete, after notice has been given of the existence of the vacancy, under such rules as may be prescribed by the commissioners as to the manner of giving notice. . . .

THIRD. Said commission shall, subject to the rules that may be made by the President, make regulations for, and have control of, such examinations, . . . .

SEC. 3. . . . The commission shall, at Washington, and in one or more places in each State and Territory where examinations are to take place, designate and select a suitable number of persons, not less than three, in the official service of the United States, residing in said State or Territory, after consulting the head of the department or office in which such persons serve, to be members of boards of examiners. . . . Such boards of examiners shall be so located as to make it reasonably convenient and inexpensive for applicants to attend before them; and where there are persons to be examined in any State or Territory, examinations shall be held therein at least twice in each year. . . .

SEC. 6. That within sixty days after the passage of this Act it shall be the duty of the Secretary of the Treasury, in as near conformity as may be to the classification of certain clerks now existing under . . . [Section 163] . . . of the Revised Statutes, to arrange in classes the several clerks and persons employed by the collector, naval officer, surveyor, and appraisers, or either of them, or being in the public service, at their respective offices in each customs district where the whole number of said clerks and persons shall be all together as many as fifty. And thereafter, from time to time, on the direction of the President, said Secretary shall make the like classification or arrangement of clerks and persons so employed, in connection with any said office or offices, in any other customs district. And, upon like request, and for the purposes of this Act, said Secretary shall arrange in one or more of said classes, or of existing classes, any other clerks, agents, or persons employed under his department in any said district not now classified; and every such arrangement and

classification upon being made shall be reported to the President.

Second. Within said sixty days it shall be the duty of the Postmaster-General, in general conformity to said . . . [Section 163] . . . , to separately arrange in classes the several clerks and persons employed, or in the public service, at each post-office, or under any postmaster of the United States, where the whole number of said clerks and persons shall together amount to as many as fifty. And thereafter, from time to time, on the direction of the President, it shall be the duty of the Postmaster-General to arrange in like classes the clerks and persons so employed in the postal service in connection with any other post-office; and every such arrangement and classification upon being made shall be reported to the President.

Third. That from time to time said Secretary, the Postmaster-General, and each of the heads of departments mentioned in . . . [Section 158] . . . of the Revised Statutes, and each head of an office, shall, on the direction of the President, and for facilitating the execution of this Act, respectively revise any then existing classification or arrangement of those in their respective departments and offices, and shall, for the purposes of the examination herein provided for, include in one or more of such classes, so far as practicable, subordinate places, clerks, and officers in the public service pertaining to their respective departments not before classified for examination.

SEC. 7. That after the expiration of six months from the passage of this Act no officer or clerk shall be appointed, and no person shall be employed to enter or be promoted in either of the said classes now existing, or that may be arranged hereunder pursuant to said rules, until he has passed an examination, or is shown to be specially exempted from such examination in conformity herewith.

SEC. 10. That no recommendation of any person who shall apply for office or place under the provisions of this Act which may be given by any Senator or member

of the House of Representatives, except as to the character or residence of the applicant, shall be received or considered by any person concerned in making any examination or appointment under this Act.

SEC. 11. That no Senator, or Representative, or Territorial Delegate of the Congress, or Senator, Representative, or Delegate elect, or any officer or employee of either of said Houses, and no executive, judicial, military, or naval officer of the United States, and no clerk or employee of any department, branch or bureau of the executive, judicial, or military or naval service of the United States, shall, directly or indirectly, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any officer, clerk, or employee of the United States, or any department, branch, or bureau thereof, or from any person receiving any salary or compensation from moneys derived from the Treasury of the United States. . . .

### 37. *In re JACOBS*, 1885

[In 1882 Samuel Gompers, who was to be the founder of the American Federation of Labor, persuaded Theodore Roosevelt to take up the question of the manufacture of cigars in tenement houses as an attempt to defeat the evil of the 'sweating system.' The Legislature of New York passed an Act prohibiting this practice, and a test case was brought before the New York Court. The Court held that the Act was unconstitutional as interfering with personal liberty and private property without due process of law. The wording of the judgment showed a remarkable blindness to the issues involved. Perhaps the main importance of the case was its effect on Theodore Roosevelt, who wrote in his *Autobiography*, 'It was this case which first waked me to a dim and partial understanding of the fact that the courts were not necessarily the best judges of what should be done to better social and industrial conditions. The judges who

rendered this decision were well-meaning men. They knew nothing of tenement-house conditions; they knew nothing whatever of the needs, or the life and labor, of three-fourths of their fellow-citizens in great cities. They knew legalism, and not life.]

EARL, J. . . . These facts showed a violation of the provision of the Act which took effect immediately upon its passage and the material portions of which are as follows: 'Section 1. The manufacture of cigars or preparation of tobacco in any form on any floor, or in any part of any floor, in any tenement-house is hereby prohibited, if such floor or any part of such floor is by any person occupied as a home or residence for the purpose of living, sleeping, cooking or doing any household work therein. . . . Section 6. This Act shall apply only to cities having over five hundred thousand inhabitants.' . . .

Generally it is for the legislature to determine what laws and regulations are needed to protect the public health and secure the public comfort and safety, and while its measures are calculated, intended, convenient and appropriate to accomplish these ends, the exercise of its discretion is not subject to review by the courts. But they must have some relation to these ends. Under the mere guise of police regulations, personal rights and private property cannot arbitrarily be invaded, and the determination of the legislature is not final or conclusive. If it passes an Act ostensibly for the public health, and thereby destroys or takes away the property of a citizen, or interferes with his personal liberty, then it is for the courts to scrutinize the Act and see whether it really relates to and is convenient and appropriate to promote the public health. It matters not that the legislature may in the title to the Act, or in its body, declare that it is intended for the improvement of the public health. Such a declaration does not conclude the courts, and they must yet determine the fact declared and enforce the supreme law. . . . The legislature may condemn or authorize the condemnation of private property for public use,

and it may, in the exercise of its discretion, determine when and upon what property the power of eminent domain may be exercised; but its exercise is not beyond the reach of judicial inquiry. Whether or not a use is a public one, which will justify the exercise of the power, is a judicial question. . . .

We will now once more recur to the law under consideration. It does not deal with tenement-houses as such; it does not regulate the number of persons who may live in any one of them, or be crowded into one room, nor does it deal with the mode of their construction for the purpose of securing the health and safety of their occupants or of the public generally. It deals mainly with the preparation of tobacco and the manufacture of cigars, and its purpose obviously was to regulate them. We must take judicial notice of the nature and qualities of tobacco. It has been in general use among civilized men for more than two centuries. It is used in some form by a majority of the men in this State: by the good and bad, learned and unlearned, the rich and the poor. Its manufacture into cigars is permitted without any hindrance, except for revenue purposes, in all civilized lands. It has never been said, so far as we can learn, and it was not affirmed even on the argument before us, that its preparation and manufacture into cigars were dangerous to the public health. We are not aware, and are not able to learn, that tobacco is even injurious to the health of those who deal in it, or are engaged in its production or manufacture. We certainly know enough about it to be sure that its manipulation in one room can produce no harm to the health of the occupants of other rooms in the same house. It was proved in this case that the odor of the tobacco did not extend to any of the other rooms of the tenement-house. . . . To justify this law it would not be sufficient that the use of tobacco may be injurious to some persons, or that its manipulation may be injurious to those who are engaged in its preparation and manufacture; but it would have to be injurious to the public health. This law was not

intended to protect the health of those engaged in cigar-making, as they are allowed to manufacture cigars everywhere except in the forbidden tenement-houses. It cannot be perceived how the cigar-maker is to be improved in his health or his morals by forcing him from his home, and its hallowed associations and beneficent influences, to ply his trade elsewhere. It was not intended to protect the health of that portion of the public not residing in the forbidden tenement-houses, as cigars are allowed to be manufactured in private houses, in large factories and shops in the too crowded cities, and in all other parts of the State. What possible relation can cigar-making in any building have on the health of the general public? Nor was it intended to improve or protect the health of the occupants of tenement-houses. If there are but three families in the tenement-house, however numerous and gregarious their members may be, manufacture is not forbidden; and it matters not how large the number of the occupants may be if they are not divided into more than three families living and cooking independently. If a store is kept for the sale of cigars on the first floor of one of these houses, and thus more tobacco is kept there than otherwise would be, and the baneful influence of tobacco, if any, is thus increased, that floor, however numerous its occupants, or the occupants of the house, is exempt from the operation of the Act. What possible relation to the health of the occupants of a large tenement-house could cigar-making in one of its remote rooms have? If the legislature had in mind the protection of the occupants of the tenement-houses, why was the Act confined in its operation to the two cities only? It is plain that this is not a health law, and that it has no relation whatever to the public health. . . . Such legislation may invade one class of rights to-day and another to-morrow, and if it can be sanctioned under the Constitution, while far removed in time we will not be far away in practical statesmanship from those ages when governmental prefects supervised the building of houses, the rearing of cattle, the sowing of

seed and the reaping of grain, and governmental ordinances regulated the movements and labor of artisans, the rate of wages, the price of food, the diet and clothing of the people, and a large range of other affairs long since in all civilized lands regarded as outside of governmental functions. Such governmental interferences disturb the normal adjustments of the social fabric, and usually derange the delicate and complicated machinery of industry and cause a score of ills while attempting the removal of one.

When a health law is challenged in the courts as unconstitutional on the ground that it arbitrarily interferes with personal liberty and private property without due process of law, the courts must be able to see that it has at least in fact some relation to the public health, that the public health is the end actually aimed at, and that it is appropriate and adapted to that end. This we have not been able to see in this law, and we must, therefore, pronounce it unconstitutional and void. . . .

### 38. WABASH, ST LOUIS, AND PACIFIC RAILROAD COMPANY *v.* ILLINOIS, 1886

[The Legislature of Illinois had passed a statute against the so-called 'long-and-short haul' evil on the railways, and under this the Wabash Railroad Company was sued. It had charged shippers fifteen cents a hundred pounds for carrying goods from Peoria, Illinois, to New York City, and twenty-five cents a hundred pounds from Gilman, Illinois, to New York City, though the latter journey was eighty-six miles shorter. The Supreme Court of Illinois upheld the State law, and the case came before the Supreme Court of the United States on a writ of error.

The Court decided that the case was covered by the commerce clause of the Constitution, and that 'this species of regulation is one which must be, if established at all, of a

general and national character, and cannot be safely left to local rules and local regulations.' As public regulation of railway rates was considered essential, this case led immediately to the passage of the first Interstate Commerce Act.]

MILLER, J. . . . The matter thus presented, as to the controlling influence of the Constitution of the United States over this legislation of the State of Illinois, raises the question which confers jurisdiction on this court. Although the precise point presented by this case may not have been heretofore decided by this court, the general subject of the power of the State legislatures to regulate taxes, fares, and tolls for passengers and transportation of freight over railroads within their limits has been very much considered recently . . . and the question how far such regulations, made by the States and under State authority, are valid or void, as they may affect the transportation of goods through more than one State, in one voyage, is not entirely new here.

The Supreme Court of Illinois, in the case now before us, conceding that each of these contracts was in itself a unit, and that the pay received by the Illinois Railroad Company was the compensation for the entire transportation from the point of departure in the State of Illinois to the city of New York, holds that, while the statute of Illinois is inoperative upon that part of the contract which has reference to the transportation outside of the State, it is binding and effectual as to so much of the transportation as was within the limits of the State of Illinois; and undertaking for itself to apportion the rates charged over the whole route, decides that the contract and the receipt of the money for so much of it as was performed within the State of Illinois violate the statute of the State on that subject.

If the Illinois statute could be construed to apply exclusively to contracts for a carriage which begins and ends within the State, disconnected from a continuous transportation through or into other States, there does not seem to be any difficulty in holding it to be valid. . . .

The Supreme Court of Illinois does not place its judgment in the present case on the ground that the transportation and the charge are exclusively State commerce, but, conceding that it may be a case of commerce among the States, or interstate commerce, which Congress would have the right to regulate if it had attempted to do so, argues that this statute of Illinois belongs to that class of commercial regulations which may be established by the laws of a State until Congress shall have exercised its power on that subject. In support of its view of the subject the Supreme Court of Illinois cites the cases of *Munn v. Illinois*; *Chicago, Burlington & Quincy Railroad v. Iowa*; and *Peik v. Chicago & North-Western Railway*, above referred to. It cannot be denied that the general language of the court in these cases, upon the power of Congress to regulate commerce, may be susceptible of the meaning which the Illinois court places upon it. . . . Whatever may be the instrumentalities by which the transportation from one point to the other is effected, it is but one voyage, as much so as that of the steamboat on the Mississippi River.

It is not the railroads themselves that are regulated by this Act of the Illinois legislature so much as the charge for transportation, and, in language just cited, if each one of the States through whose territories these goods are transported can fix its own rules for prices, for modes of transit, for times and modes of delivery, and all the other incidents of transportation to which the word 'regulation' can be applied, it is readily seen that the embarrassments upon interstate transportation, as an element of interstate commerce, might be too oppressive to be submitted to. 'It was,' in the language of the court cited above, 'to meet just such a case that the commerce clause of the Constitution was adopted.'

It cannot be too strongly insisted upon that the right of continuous transportation, from one end of the country to the other, is essential, in modern times, to that freedom of commerce from the restraints which the States might choose to impose upon it, that the com-

merce clause was intended to secure. This clause, giving to Congress the power to regulate commerce among the States, and with foreign nations, as this court has said before, was among the most important of the subjects which prompted the formation of the Constitution. . . . And it would be a very feeble and almost useless provision, but poorly adapted to secure the entire freedom of commerce among the States which was deemed essential to a more perfect union by the framers of the Constitution, if, at every stage of the transportation of goods and chattels through the country, the State within whose limits a part of this transportation must be done could impose regulations concerning the price, compensation, or taxation, or any other restrictive regulation interfering with and seriously embarrassing this commerce. . . .

We must therefore hold that it is not, and never has been, the deliberate opinion of a majority of this court that a statute of a State which attempts to regulate the fares and charges by railroad companies within its limits, for a transportation which constitutes a part of commerce among the States, is a valid law.

Let us see precisely what is the degree of interference with transportation of property or persons from one State to another which this statute proposes. A citizen of New York has goods which he desires to have transported by the railroad companies from that city to the interior of the State of Illinois. A continuous line of rail over which a car loaded with these goods can be carried, and is carried habitually, connects the place of shipment with the place of delivery. He undertakes to make a contract with a person engaged in the carrying business at the end of this route from whence the goods are to start, and he is told by the carrier: 'I am free to make a fair and reasonable contract for this carriage to the line of the State of Illinois, but when the car which carries these goods is to cross the line of that State, pursuing at the same time this continuous track, I am met by a law of Illinois which forbids me to make a free contract concerning this transportation within that State, and

subjects me to certain rules by which I am to be governed as to the charges which the same railroad company in Illinois may make, or has made, with reference to other persons and other places of delivery.' So that while that carrier might be willing to carry these goods from the city of New York to the city of Peoria at the rate of fifteen cents per hundred pounds, he is not permitted to do so, because the Illinois Railroad Company has already charged at the rate of twenty-five cents per hundred pounds for carriage to Gilman, in Illinois, which is eighty-six miles shorter than the distance to Peoria.

So, also, in the present case, the owner of corn, the principal product of the country, desiring to transport it from Peoria, in Illinois, to New York, finds a railroad company willing to do this at the rate of fifteen cents per hundred pounds for a car-load, but is compelled to pay at the rate of twenty-five cents per hundred pounds, because the railroad company has received from a person residing at Gilman twenty-five cents per hundred pounds for the transportation of a car-load of the same class of freight over the same line of road from Gilman to New York. This is the result of the statute of Illinois, in its endeavor to prevent unjust discrimination, as construed by the Supreme Court of that State. The effect of it is that whatever may be the rate of transportation per mile charged by the railroad company from Gilman to Sheldon, a distance of twenty-three miles, in which the loading and the unloading of the freight is the largest expense incurred by the railroad company, the same rate per mile must be charged from Peoria to the city of New York.

The obvious injustice of such a rule as this, which railroad companies are by heavy penalties compelled to conform to, in regard to commerce among the States, when applied to transportation which includes Illinois in a long line of carriage through several States, shows the value of the constitutional provision which confides the power of regulating interstate commerce to the Congress of the United States, whose enlarged view

of the interests of all the States, and of the railroads concerned, better fits it to establish just and equitable rules.

Of the justice or propriety of the principle which lies at the foundation of the Illinois statute it is not the province of this court to speak. As restricted to a transportation which begins and ends within the limits of the State, it may be very just and equitable, and it certainly is the province of the State legislature to determine that question. But when it is attempted to apply to transportation through an entire series of States a principle of this kind, and each one of the States shall attempt to establish its own rates of transportation, its own methods to prevent discrimination in rates, or to permit it, the deleterious influence upon the freedom of commerce among the States, and upon the transit of goods through those States, cannot be overestimated. That this species of regulation is one which must be, if established at all, of a general and national character, and cannot be safely and wisely remitted to local rules and local regulations, we think is clear from what has already been said. And if it be a regulation of commerce, as we think we have demonstrated it is, and as the Illinois court concedes it to be, it must be of that national character; and the regulation can only appropriately exist by general rules and principles, which demand that it should be done by the Congress of the United States under the commerce clause of the Constitution.

### 39. THE INTERSTATE COMMERCE ACT, 1887

[The Supreme Court in the *Wabash* case (No. 38) had decided that regulation of railroad rates was not the concern of the States, but only of Congress under the commerce clause of the Constitution. The powers of Congress over

interstate commerce had been established in the case of *Gibbons v. Ogden* in 1824 (see Vol. II, No. 31). Action was urgently needed, and Congress quickly passed the Interstate Commerce Act on 4 February 1887. Under this Act the pooling of rates, rebates, and the 'long-and-short-haul' evil were prohibited, and it was provided that all charges should be 'just and reasonable.' Railroads were required to post their tariffs, and an Interstate Commerce Commission, a most important innovation in American Government technique, was set up. But the Act did nothing to define the essential phrase, 'reasonable and just,' and the Supreme Court soon whittled away the powers of the Commission.]

### *An Act to regulate commerce*

*Be it enacted . . . ,* That the provisions of this Act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

The term 'railroad' as used in this Act shall include

all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term 'transportation' shall include all instrumentalities of shipment or carriage.

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

SEC. 2. That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

SEC. 3. That it shall be unlawful for any common carrier, subject to the provisions of this Act, to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Every common carrier subject to the provisions of this Act shall, according to their respective powers,

afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

SEC. 4. That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this Act to charge and receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the Commission appointed under the provisions of this Act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this Act.

SEC. 5. That it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

SEC. 6. That every common carrier subject to the provisions of this Act shall print and keep for public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its railroad, as defined by the first section of this Act. . . . Copies for the use of the public shall be kept in every depot or station upon any such railroad, in such places and in such form that they can be conveniently inspected. . . .

No advance shall be made in the rates, fares, and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this section, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect. . . .

And when any such common carrier shall have established and published its rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares, and charges as may at the time be in force.

Every common carrier subject to the provisions of this Act shall file with the Commission hereinafter provided for copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this Act to which it may be a party. . . .

SEC. 9. That any person or persons claiming to be

damaged by any common carrier subject to the provisions of this Act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this Act, in any district or circuit court of the United States of competent jurisdiction. . . .

SEC. 10. That any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, . . . shall be guilty of any infraction of this Act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense.

SEC. 11. That a Commission is hereby created and established to be known as the Inter-State Commerce Commission, which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioners first appointed under this Act shall continue in office for the term of two, three, four, five, and six years, respectively, from 1 January 1887, the term of each to be designated by the President; but their successors shall be appointed for terms of six years. . . . Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. Not more than three of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this Act, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. Said

Commissioners shall not engage in any other business, vocation, or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission.

SEC. 12. That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this Act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and for the purposes of this Act the Commission shall have power to require the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation, and to that end may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section. . . .

SEC. 13. That any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission. . . . If there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Said Commission shall in like manner investigate

any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made. . . .

SEC. 16. That whenever any common carrier, . . . shall violate or refuse or neglect to obey any lawful order or requirement of the Commission in this Act named, it shall be the duty of the Commission, and lawful for any company or person interested in such order or requirement, to apply, in a summary way, by petition, to the circuit court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may be; and the said court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court shall deem reasonable. . . .

#### 40. THE DAWES ACT, 1887

[The problem of the American Indians is a story of four centuries. In the eighteen-sixties it was suddenly intensified by the settlements in the Great Plains, and a series of Indian wars broke out. In 1865 a Committee of Congress had advocated a policy of reservations for the Indians, but little or nothing was done by the Federal Government. In 1877 President Hayes, in his Annual Message, declared, 'In many instances, when they had settled down on lands assigned to them by compact and began to support themselves by their own labor, they were rudely jostled off and thrust into the wilderness again. Many, if not most, of our Indian wars have had their origin in broken promises and acts of injustice on our part.'

A new policy began to be followed after 1875, based on

the principle of reservations and on that of treating the Indians as individuals and not only as members of tribes, with whom treaties were made. This culminated in the Dawes Act of 1887. By this law the tribes were dissolved as legal entities, the reservations were secured to the Indians for twenty-five years, after which time they would become unrestricted owners of the land and be admitted to full citizenship. In 1901 the Five Civilized Nations received citizenship, and in 1924 it was granted to all Indians in the United States.]

*An Act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes.*

*Be it enacted, That in all cases where any tribe or band of Indians has been, or shall hereafter be, located upon any reservation created for their use, either by treaty stipulation or by virtue of an Act of Congress or executive order setting apart the same for their use, the President of the United States be, and he hereby is, authorized, whenever in his opinion any reservation or any part thereof of such Indians is advantageous for agriculture and grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or resurveyed if necessary, and to allot the lands in said reservation in severalty to any Indian located thereon in quantities as follows:*

*To each head of a family, one-quarter of a section;*

*To each single person over eighteen years of age, one-eighth of a section;*

*To each orphan child under eighteen years of age, one-eighth of a section; and,*

*To each other single person under eighteen years now living, or who may be born prior to the date of the order of the President directing an allotment of the lands embraced in any reservation, one-sixteenth of a section: . . .*

**SEC. 5.** *That upon the approval of the allotments provided for in this Act by the Secretary of the Interior, he shall . . . declare that the United States does and*

will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, . . . and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of such trust and free of all charge or incumbrance whatsoever: . . .

SEC. 6. That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; . . . And every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this Act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property. . . .

#### 41. THE SHERMAN ANTI-TRUST ACT, 1890

[One of the most significant features of the expansion of American industry in the period after the Civil War was the rise of the great trusts (see No. 34). In the eighties there developed a popular movement for their regulation or destruction. As Justice Harlan said in the *Standard Oil* case

in 1911 (see No. 63), 'there was everywhere among the people a deep feeling of unrest. The nation had been rid of human slavery . . . but the conviction was universal that the country was in real danger from another kind of slavery, namely the slavery that would result from the aggregation of capital in the hands of a few.' As a result Congress, on 2 July 1890, passed the famous Sherman Anti-Trust Act.

This Act was to have a chequered history. Its phrasing was in many respects ambiguous and, in particular, there was no attempt to define the term 'trust.' In 1895 the Government failed before the Supreme Court to secure the dissolution of the great Sugar Trust (No. 45), and until President Theodore Roosevelt began his great attack on industrial monopolies (Nos. 53 and 59) very little further use was made of the Act. But the decision of the District Court in the *New Orleans Strike* case in 1893 (No. 43) and of the Circuit Court in the *Debs* case in 1894 (No. 44b), that the words in the first section of the Act, 'or otherwise,' might be taken to include labour organizations, enabled the Act to be used effectively in labour disputes against strikers.]

*An Act to protect trade and commerce against  
unlawful restraints and monopolies*

*Be it enacted*

SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment

not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. . . .

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this Act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this Act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is

found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

SEC. 8. That the word 'person,' or 'persons,' wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

## 42. THE POPULIST PARTY PLATFORM, 1892

[The Populist Party was founded in 1890. It grew out of the agrarian distress in the South and the Middle West of the eighties, particularly after the disastrous slump of 1887, and was recruited from the various political groups which expressed the popular revolt from the two great political parties. The main plank of the party platform was 'free silver' (see No. 28), but it advocated also public ownership of the railways, electoral reforms, the income-tax, labour legislation, the Initiative and the Referendum. In fact, the Populists sketched out the main lines of reform in American politics until the present day.

The party made itself felt at once in the Congressional elections of 1890 by securing the election of four Senators and fifty Representatives. On 4 July 1892 a National Convention met at Omaha and adopted a platform drawn up by Ignatius Donnelly of Minnesota, and nominated James B. Weaver as its candidate in the presidential election. He gained twenty-two electoral votes and over a million popular votes, the only third-party candidate to secure so many since 1860, except in 1912, when the Republican party was split, and in 1920, when Senator La Follette led a rather similar movement. In 1896 the Populists joined forces with W. J. Bryan and the party came to an end.]

Assembled upon the 116th anniversary of the Declaration of Independence, the People's Party of

America, in their first national convention, invoking upon their action the blessing of Almighty God, put forth in the name and on behalf of the people of this country, the following preamble and declaration of principles :

#### PREAMBLE

The conditions which surround us best justify our co-operation; we meet in the midst of a nation brought to the verge of moral, political, and material ruin. Corruption dominates the ballot-box, the Legislatures, the Congress, and touches even the ermine of the bench. The people are demoralized; most of the States have been compelled to isolate the voters at the polling places to prevent universal intimidation and bribery. The newspapers are largely subsidized or muzzled, public opinion silenced, business prostrated, homes covered with mortgages, labor impoverished, and the land concentrating in the hands of capitalists. The urban workmen are denied the right to organize for self-protection, imported pauperized labor beats down their wages, a hireling standing army, unrecognized by our laws, is established to shoot them down, and they are rapidly degenerating into European conditions. The fruits of the toil of millions are boldly stolen to build up colossal fortunes for a few, unprecedented in the history of mankind; and the possessors of these, in turn, despise the Republic and endanger liberty. From the same prolific womb of governmental injustice we breed the two great classes—tramps and millionaires.

The national power to create money is appropriated to enrich bond-holders; a vast public debt payable in legal-tender currency has been funded into gold-bearing bonds, thereby adding millions to the burdens of the people.

Silver, which has been accepted as coin since the dawn of history, has been demonetized to add to the purchasing power of gold by decreasing the value of all forms of property as well as human labor, and the

supply of currency is purposely abridged to fatten usurers, bankrupt enterprise, and enslave industry. A vast conspiracy against mankind has been organized on two continents, and it is rapidly taking possession of the world. If not met and overthrown at once it forebodes terrible social convulsions, the destruction of civilization, or the establishment of an absolute despotism.

We have witnessed for more than a quarter of a century the struggles of the two great political parties for power and plunder, while grievous wrongs have been inflicted upon the suffering people. We charge that the controlling influences dominating both these parties have permitted the existing dreadful conditions to develop without serious effort to prevent or restrain them. Neither do they now promise us any substantial reform. They have agreed together to ignore, in the coming campaign, every issue but one. They propose to drown the outcries of a plundered people with the uproar of a sham battle over the tariff, so that capitalists, corporations, national banks, rings, trusts, watered stock, the demonetization of silver, and the oppressions of the usurers may all be lost sight of. They propose to sacrifice our homes, lives, and children on the altar of mammon; to destroy the multitude in order to secure corruption funds from the millionaires.

Assembled on the anniversary of the birthday of the nation, and filled with the spirit of the grand general and chief who established our independence, we seek to restore the government of the Republic to the hands of the 'plain people,' with which class it originated. We assert our purposes to be identical with the purposes of the National Constitution; to form a more perfect union and establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty for ourselves and our posterity.

We declare that this Republic can only endure as a free government while built upon the love of the people for each other and for the nation; that it cannot be

pinned together by bayonets; that the Civil War is over, and that every passion and resentment which grew out of it must die with it, and that we must be in fact, as we are in name, one united brotherhood of free men.

Our country finds itself confronted by conditions for which there is no precedent in the history of the world; our annual agricultural productions amount to billions of dollars in value, which must, within a few weeks or months, be exchanged for billions of dollars' worth of commodities consumed in their production; the existing currency supply is wholly inadequate to make this exchange; the results are falling prices, the formation of combines and rings, the impoverishment of the producing class. We pledge ourselves that if given power we will labor to correct these evils by wise and reasonable legislation, in accordance with the terms of our platform.

We believe that the power of government—in other words, of the people—should be expanded (as in the case of the postal service) as rapidly and as far as the good sense of an intelligent people and the teachings of experience shall justify, to the end that oppression, injustice, and poverty shall eventually cease in the land.

While our sympathies as a party of reform are naturally upon the side of every proposition which will tend to make men intelligent, virtuous, and temperate, we nevertheless regard these questions, important as they are, as secondary to the great issues now pressing for solution, and upon which not only our individual prosperity but the very existence of free institutions depend; and we ask all men to first help us to determine whether we are to have a republic to administer before we differ as to the conditions upon which it is to be administered, believing that the forces of reform this day organized will never cease to move forward until every wrong is righted and equal rights and equal privileges securely established for all the men and women of this country.

**PLATFORM**

We declare, therefore—

First.—That the union of the labor forces of the United States this day consummated shall be permanent and perpetual; may its spirit enter into all hearts for the salvation of the Republic and the uplifting of mankind.

Second.—Wealth belongs to him who creates it, and every dollar taken from industry without an equivalent is robbery. ‘If any will not work, neither shall he eat.’ The interests of rural and civil labor are the same: their enemies are identical.

Third.—We believe that the time has come when the railroad corporations will either own the people or the people must own the railroads; and should the government enter upon the work of owning and managing all railroads, we should favor an amendment to the constitution by which all persons engaged in the government service shall be placed under a civil-service regulation of the most rigid character, so as to prevent the increase of the power of the national administration by the use of such additional government employes.

**FINANCE.**—We demand a national currency, safe, sound, and flexible, issued by the general government only, a full legal tender for all debts, public and private, and that without the use of banking corporations; a just, equitable, and efficient means of distribution direct to the people, at a tax not to exceed 2 per cent. per annum, to be provided as set forth in the sub-treasury plan of the Farmers’ Alliance, or a better system; also by payments in discharge of its obligations for public improvements.

1. We demand free and unlimited coinage of silver and gold at the present legal ratio of 16 to 1.
2. We demand that the amount of circulating medium be speedily increased to not less than \$50 per capita.
3. We demand a graduated income tax.

4. We believe that the money of the country should be kept as much as possible in the hands of the people, and hence we demand that all State and national revenues shall be limited to the necessary expenses of the government, economically and honestly administered.
5. We demand that postal savings banks be established by the government for the safe deposit of the earnings of the people and to facilitate exchange.

**TRANSPORTATION.**—Transportation being a means of exchange and a public necessity, the government should own and operate the railroads in the interest of the people. The telegraph and telephone, like the post-office system, being a necessity for the transmission of news, should be owned and operated by the government in the interest of the people.

**LAND.**—The land, including all the natural sources of wealth, is the heritage of the people, and should not be monopolized for speculative purposes, and alien ownership of land should be prohibited. All land now held by railroads and other corporations in excess of their actual needs, and all lands now owned by aliens, should be reclaimed by the government and held for actual settlers only.

#### EXPRESSION OF SENTIMENTS

Your Committee on Platform and Resolutions beg leave unanimously to report the following:

Whereas, Other questions have been presented for our consideration, we hereby submit the following, not as a part of the Platform of the People's Party, but as resolutions expressive of the sentiment of this Convention.

1. **RESOLVED**, That we demand a free ballot and a fair count in all elections, and pledge ourselves to secure it to every legal voter without Federal intervention, through the adoption by the States of the unperverted Australian or secret ballot system.

2. RESOLVED, That the revenue derived from a graduated income tax should be applied to the reduction of the burden of taxation now levied upon the domestic industries of this country.
3. RESOLVED, That we pledge our support to fair and liberal pensions to ex-Union soldiers and sailors.
4. RESOLVED, That we condemn the fallacy of protecting American labor under the present system, which opens our ports to the pauper and criminal classes of the world and crowds out our wage-earners; and we denounce the present ineffective laws against contract labor, and demand the further restriction of undesirable emigration.
5. RESOLVED, That we cordially sympathize with the efforts of organized workingmen to shorten the hours of labor, and demand a rigid enforcement of the existing eight-hour law on Government work, and ask that a penalty clause be added to the said law.
6. RESOLVED, That we regard the maintenance of a large standing army of mercenaries, known as the Pinkerton system, as a menace to our liberties, and we demand its abolition; and we condemn the recent invasion of the Territory of Wyoming by the hired assassins of plutocracy, assisted by Federal officers.
7. RESOLVED, That we commend to the favorable consideration of the people and the reform press the legislative system known as the initiative and referendum.
8. RESOLVED, That we favor a constitutional provision limiting the office of President and Vice-President to one term, and providing for the election of Senators of the United States by a direct vote of the people.
9. RESOLVED, That we oppose any subsidy or national aid to any private corporation for any purpose.
10. RESOLVED, That this convention sympathizes with the Knights of Labor and their righteous contest with the tyrannical combine of clothing

manufacturers of Rochester, and declare it to be a duty of all who hate tyranny and oppression to refuse to purchase the goods made by the said manufacturers, or to patronize any merchants who sell such goods.

43. UNITED STATES *v.* WORKINGMEN'S AMALGAMATED COUNCIL OF NEW ORLEANS *et al.*, 1893

[The Sherman Anti-Trust Act had enacted that 'every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal.' This case arose out of a strike at the New Orleans warehouses, as a result of which it was alleged, 'the whole business of the city of New Orleans was paralysed, and the transit of goods and merchandise which was being conveyed through it from State to State, and to and from foreign countries, was totally interrupted.' The Court held that the labour organizations were covered by the term 'or otherwise' in the Act and were, therefore, illegal. The Sherman Act was thereby transformed into a weapon not so much against trusts as against trade unions and as such it was vigorously used.]

BILLINGS, District Judge.—This cause is submitted upon an application for an injunction on the bill of complaint, answer, and numerous affidavits and exhibits. The bill of complaint in this case is filed by the United States under the Act of Congress entitled 'An Act to protect trade and commerce against unlawful restraint and monopolies' (26 St. at Large, p. 209). The substance of the bill avers that a disagreement between the warehousemen and their employes and the principal draymen and their subordinates had been adopted by all the organizations named in the bill, until, by this vast combination of men and of organizations, it was threatened that, unless there was an acquiescence in the demands

of the subordinate workmen and draymen, all the men in all the defendant organizations would leave work, and would allow no work in any department of business; that violence was threatened and used in support of this demand; and that this demand included the interstate and foreign commerce which flows through the city of New Orleans. The bill further states that the proceedings on the part of the defendants had taken such a vast and ramified proportion that, in consequence of the threats of the defendants, the whole business of the city of New Orleans was paralyzed, and the transit of goods and merchandise which was being conveyed through it from State to State, and to and from foreign countries, was totally interrupted. . . .

. . . The theory of the defense is that this case does not fall within the purview of the statute; that the statute prohibited monopolies and combinations which, using words in a general sense, were of capitalists, and not of laborers. I think the congressional debates show that the statute had its origins in the evils of massed capital; but, when the Congress came to formulating the prohibition which is the yardstick for measuring to complainant's right to injunction, . . . the subject had so broadened in the minds of the legislators that the source of the evil was not regarded as material, and the evil in its entirety is dealt with. They made the interdiction include combinations of labor, as well as of capital; in fact, all combinations in restraint of commerce, without reference to the character of the persons who entered into them. It is true this statute has not been much expounded by judges, but, as it seems to me, its meaning, as far as relates to the sort of combinations to which it is to apply, is manifest, and that it includes combinations which are composed of laborers acting in the interest of laborers. . . .

The defendants urge (6) that the combination to secure or compel the employment of none but union men is not in the restraint of commerce. To determine whether the proposition urged as a defense can apply to this case, the case must first be stated as it is made

out by the established facts. The case is this: The combination setting out to secure and compel the employment of none but union men in a given business, as a means to effect this compulsion, finally enforced a discontinuance of labor in all kinds of business, including the business of transportation of goods and merchandise which were in transit through the city of New Orleans, from State to State, and to and from foreign countries. When the case is thus stated—and it must be so stated to embody the facts here proven—I do not think there can be any question but that the combination of the defendants was in restraint of commerce.

I have thus endeavored to state and deal with the various grounds of defense urged before me. I shall now, as briefly as possible, state the case as it is established in the voluminous record.

. . . The question simply is, do these facts establish a case within the statute? It seems to me this question is tantamount to the question, could there be a case under the statute? It is conceded that the labor organizations were at the outset lawful. But when lawful forces are put into unlawful channels—i.e. when lawful associations adopt and further unlawful purposes and do unlawful acts—the associations themselves become unlawful. The evil, as well as the unlawfulness, of the act of the defendants, consists in this: that, until certain demands of theirs were complied with, they endeavored to prevent, and did prevent, everybody from moving the commerce of the country. . . .

It is the successful effort of the combination of the defendants to intimidate and overawe others who were at work in conducting or carrying on the commerce of the country, in which the court finds their error and their violation of the statute. One of the intended results of their combined action was the forced stagnation of all the commerce which flowed through New Orleans. This intent and combined action are none the less unlawful because they included in their scope the paralysis of all other business within the city as well. . . .

#### 44. THE PULLMAN STRIKE, 1894

[In 1894 there was a strike against the Pullman Palace Car Company on the refusal of Pullman to discuss grievances with representatives of his employees' organization. The strike was supported by the American Railway Union under their leader, Eugene Debs. The result was a general railway strike throughout the North and a dangerous situation was created. President Cleveland supported the railway owners, and the Attorney-General, Olney, appointed as special counsel for the United States, Edwin Walker, a railway lawyer. At his suggestion the Federal Circuit Court of Illinois served an injunction against the Railway Union obstructing the railways and the mails, based on the first section of the Sherman Anti-Trust Act. This use of an injunction in labour disputes was a valuable instrument for the owners, as those who disobeyed it could be imprisoned for contempt of court without further discussion of the merits of the case.

The result of the injunction was further disorder in the neighbourhood of Chicago. Cleveland decided to make use of the powers which he considered were legally his under the Constitution, as the mails were being obstructed. (Article I, Section 8, of the Constitution gives Congress power 'to establish Post Offices and post roads,' and Article II, Section 3, says that the President 'shall take care that the Laws be faithfully executed.') On 4 July he sent a regiment of Federal troops into Chicago. John Altgeld, Governor of Illinois, who had a reputation for sympathy with labour reformers, protested against this interference with the rights of the State and declared that he was able and ready to put down all disorder. His protest was ignored and the strike was smashed.

Debs had defied the injunction and had been sentenced to six months imprisonment for contempt of court. He appealed to the Supreme Court, which upheld the order. It declared that this decision rested, not upon the interpretation given by the Circuit Court to the Sherman Anti-Trust Act, but on the much broader grounds that 'the strong arm of the national government may be put forth to brush away

all obstructions to the freedom of interstate commerce or the transportation of mails,' and that, 'if the emergency arises, the army of the nation, and all its militia, are at the service of the nation to compel obedience to its laws.]

(a) *Letters between President Cleveland and Governor Altgeld*

(1) EXECUTIVE OFFICE, STATE OF ILLINOIS,  
5 July 1894.

Hon. Grover Cleveland, President of the United States,  
Washington, D.C.

Sir:—I am advised that you have ordered Federal troops to go into service in the State of Illinois. Surely the facts have not been correctly presented to you in this case, or you would not have taken this step, for it is entirely unnecessary, and, as it seems to me, unjustifiable. Waiving all questions of courtesy, I will say that the State of Illinois is not only able to take care of itself, but it stands ready to furnish the Federal Government any assistance it may need elsewhere. Our military force is ample, and consists of as good soldiers as can be found in the country. They have been ordered promptly whenever and wherever they were needed. We have stationed in Chicago alone three Regiments of Infantry, one Battery, and one troop of Cavalry, and no better soldiers can be found. They have been ready every moment to go on duty, and have been and are now eager to go into service, but they have not been ordered out because nobody in Cook county, whether official or private citizen, asked to have their assistance, or even intimated in any way that their assistance was desired or necessary.

So far as I have been advised, the local officials have been able to handle the situation. But if any assistance were needed, the State stood ready to furnish a hundred men for every one man required, and stood ready to do so at a moment's notice. Notwithstanding these facts the Federal Government has been applied to by men who had political and selfish motives for wanting to

ignore the State Government. We have just gone through a coal strike, more extensive here than in any other State. We have now had ten days of the railroad strike, and we have promptly furnished military aid wherever the local officials needed it.

In two instances the United States marshal for the Southern District of Illinois applied for assistance to enable him to enforce the processes of the United States court, and troops were promptly furnished him, and he was assisted in every way he desired. The law has been thoroughly executed, and every man guilty of violating it during the strike has been brought to justice. If the marshal of the Northern District of Illinois or the authorities of Cook county needed military assistance they had but to ask for it in order to get it from the State.

At present some of our railroads are paralyzed, not by reason of obstruction, but because they cannot get men to operate their trains. For some reason they are anxious to keep this fact from the public, and for this purpose they are making an outcry about obstructions in order to divert attention. Now, I will cite to you two examples which illustrate the situation: . . .

It is true that in several instances a road made efforts to work a few green men, and a crowd standing around insulted them and tried to drive them away, and in a few other cases they cut off Pullman sleepers from trains. But all these troubles were local in character and could easily be handled by the State authorities. Illinois has more railroad men than any other State in the Union, but as a rule they are orderly and well-behaved. This is shown by the fact that so very little actual violence has been committed. Only a very small percentage of these men have been guilty of infractions of the law. The newspaper accounts have in many cases been pure fabrications, and in others wild exaggerations.

I have gone thus into details to show that it is not soldiers that the railroads need so much as it is men to operate trains, and that the conditions do not exist

here which bring the cause within the Federal statute, a statute that was passed in 1881 (1861) and was in reality a war measure. The statute authorized the use of Federal troops in a State whenever it shall be impracticable to enforce the laws of the United States within such States by the ordinary judicial proceedings. Such a condition does not exist in Illinois. There have been a few local disturbances, but nothing that seriously interfered with the administration of justice, or that could not be easily controlled by the local or State authorities, for the Federal troops can do nothing that the State troops cannot do.

I repeat that you have been imposed upon in this matter; but even if by a forced construction it were held that the conditions here came within the letter of the statute, then I submit that local self-government is a fundamental principle of our Constitution. Each community shall govern itself so long as it can and is ready and able to enforce the law, and it is in harmony with this fundamental principle that the statute authorizing the President to send troops into States must be construed; especially is this so in matters relating to the exercise of the police power and the preservation of law and order.

To absolutely ignore a local government in matters of this kind, when the local government is ready to furnish assistance needed, and is amply able to enforce the law, not only insults the people of this State by imputing to them an inability to govern themselves, or an unwillingness to enforce the law, but is in violation of a basic principle of our institutions. The question of Federal supremacy is in no way involved. No one disputes it for a moment; but, under our Constitution, Federal supremacy and local self-government must go hand in hand, and to ignore the latter is to do violence to the Constitution.

As Governor of the State of Illinois, I protest against this, and ask the immediate withdrawal of the Federal troops from active duty in this State. Should the situation at any time get so serious that we cannot

control it with the State forces, we will promptly ask for Federal assistance; but until such time, I protest, with all due deference, against this uncalled for reflection upon our people, and again ask the immediate withdrawal of these troops. I have the honor to be, yours respectfully,

JOHN P. ALTGELD, Governor of Illinois.

(2) EXECUTIVE MANSION, WASHINGTON, D.C.,  
5 July 1894.

Hon. John P. Altgeld, Governor of Illinois, Springfield, Ill.

Sir:—Federal troops were sent to Chicago in strict accordance with the Constitution and laws of the United States, upon the demand of the post-office department that obstruction of the mails should be removed, and upon the representations of the judicial officers of the United States that the process of the Federal courts could not be executed through the ordinary means, and upon competent proof that conspiracies existed against commerce between the States. To meet these conditions, which are clearly within the province of Federal authority, the presence of Federal troops in the city of Chicago was deemed not only proper, but necessary, and there has been no intention of thereby interfering with the plain duty of the local authorities to preserve the peace of the city.

GROVER CLEVELAND.

(3) EXECUTIVE OFFICE, STATE OF ILLINOIS,  
6 July 1894.

Hon. Grover Cleveland, President of the United States,

Sir:—Your answer to my protest involves some startling conclusions and ignores and evades the question at issue—that is, that the principle of local self-government is just as fundamental in our institutions as is that of Federal supremacy.

First—You calmly assume that the executive has the

legal right to order Federal troops into any community of the United States, in the first instance, whenever there is the slightest disturbance, and that he can do this without any regard to the question as to whether that community is able and ready to enforce the law itself. Inasmuch as the executive is the sole judge of the question as to whether any disturbance exists in any part of the country, this assumption means that the executive can send Federal troops into any community in the United States at his pleasure, and keep them there as long as he chooses. If this is the law, then the principle of self-government either never did exist in this country or else has been destroyed, for no community can be said to possess local self-government if the executive can, at his pleasure, send military forces to patrol its streets under pretense of enforcing some law. The kind of local self-government that could exist under these circumstances can be found in any of the monarchies of Europe, and it is not in harmony with the spirit of our institutions.

Second--It is also a fundamental principle in our government that except in times of war the military shall be subordinate to the civil authority. In harmony with this provision, the State troops are ordered out to act under and with the civil authorities. The troops you have ordered to Chicago are not under the civil authorities, and are in no way responsible to them for their conduct. They are not even acting under the United States marshal or any Federal officer of the State, but are acting directly under military orders issued from military headquarters at Washington; and in so far as these troops act at all, it is military government.

Third--The statute authorizing Federal troops to be sent into States in certain cases contemplates that the State troops shall be taken first. This provision has been ignored and it is assumed that the executive is not bound by it. Federal interference with industrial disturbances in the various States is certainly a new departure, and it opens up so large a field that it will

require a very little stretch of authority to absorb to itself all the details of local government.

Fourth—You say that troops were ordered into Illinois upon the demand of the post-office department, and upon representations of the judicial officers of the United States that process of the courts could not be served, and upon proof that conspiracies existed. We will not discuss the facts, but look for a moment at the principle involved in your statement. All of these officers are appointed by the executive. Most of them can be removed by him at will. They are not only obliged to do his bidding, but they are in fact a part of the executive. If several of them can apply for troops, one alone can; so that under the law, as you assume it to be, an executive, through any one of his appointees, can apply to himself to have the military sent into any city or number of cities, and base his application on such representations as he sees fit to make. In fact, it will be immaterial whether he makes any showing or not, for the executive is the sole judge, and nobody else has any right to interfere or even inquire about it. Then the executive can pass on his own application, his will being the sole guide—he can hold the application to be sufficient, and order troops to as many places as he wishes and put them in command of anyone he chooses, and have them act, not under the civil officers, either Federal or State, but directly under military orders from Washington, and there is not in the Constitution or laws, whether written or unwritten, any limitation or restraint upon his power. His judgment—that is, his will—is the sole guide; and it being purely a matter of discretion, his decision can never be examined or questioned.

This assumption as to the power of the executive is certainly new, and I respectfully submit that it is not the law of the land. The jurists have told us that this is a government of law, and not a government by the caprice of an individual, and, further, instead of being autocratic, it is a government of limited power. Yet the autocrat of Russia could certainly not possess, or

claim to possess, greater power than is possessed by the executive of the United States, if your assumption is correct.

Fifth—The executive has the command not only of the regular forces of all the United States, but of the military forces of all the States, and can order them to any place he sees fit; and as there are always more or less local disturbances over the country, it will be an easy matter under your construction of the law for an ambitious executive to order out the military forces of all of the States, and establish at once a military government. The only chance of failure in such a movement could come from rebellion, and with such a vast military power at command this could readily be crushed, for, as a rule, soldiers will obey orders.

As for the situation in Illinois, that is of no consequence now compared with the far-reaching principle involved. True, according to my advices, Federal troops have now been on duty for over two days, and although the men were brave and the officers valiant and able, yet their very presence proved to be an irritant because it aroused the indignation of a large class of people who, while upholding law and order, had been taught to believe in local self-government, and therefore resented what they regarded as unwarranted interference.

Inasmuch as the Federal troops can do nothing but what the State troops can do there, and believing that the State is amply able to take care of the situation and enforce the law, and believing that the ordering out of the Federal troops was unwarranted, I again ask their withdrawal.

JOHN P. ALTGELD.

(4)

EXECUTIVE MANSION, WASHINGTON, D.C.,  
6 July 1894.

While I am still persuaded that I have neither transcended my authority nor duty in the emergency that confronts us, it seems to me that, in this hour of danger and public distress, discussion may well give way to

active efforts on the part of all in authority to restore obedience to law and to protect life and property.

GROVER CLEVELAND.

Hon. John P. Altgeld,  
Governor of Illinois.

(b) *In re Debs, 1895*

BREWER, J. The case presented by the bill is this: The United States, finding that the interstate transportation of persons and property, as well as the carriage of the mails, is forcibly obstructed, and that a combination and conspiracy exists to subject the control of such transportation to the will of the conspirators, applied to one of their courts, sitting as a court of equity, for an injunction to restrain such obstruction and prevent carrying into effect such conspiracy. Two questions of importance are presented: First. Are the relations of the general government to interstate commerce and the transportation of the mails such as to authorize a direct interference to prevent a forcible obstruction thereof? Second. If authority exists, as authority in governmental affairs implies both power and duty, has a court of equity jurisdiction to issue an injunction in aid of the performance of such duty?

First. What are the relations of the general government to interstate commerce and the transportation of the mails? They are those of direct supervision, control, and management. While under the dual system which prevails with us the powers of government are distributed between the State and the nation, and while the latter is properly styled a government of enumerated powers, yet within the limits of such enumeration it has all the attributes of sovereignty, and, in the exercise of those enumerated powers, acts directly upon the citizen, and not through the intermediate agency of the State. . . .

Among the powers expressly given to the national government are the control of interstate commerce and the creation and management of the post-office system for the nation. Article I, section 8, of the

Constitution provides that 'the Congress shall have power. . . . Third, to regulate commerce with foreign nations and among the several States, and with the Indian tribes. . . . Seventh, to establish post offices and post roads.' . . .

Under the power vested in Congress to establish post offices and post roads, Congress has, by a mass of legislation, established the great post-office system of the country, with all its detail of organization, its machinery for the transaction of business, defining what shall be carried and what not, and the prices of carriage, and also prescribing penalties for all offenses against it.

Obviously these powers given to the national government over interstate commerce and in respect to the transportation of the mails were not dormant and unused. Congress had taken hold of these two matters, and by various and specific Acts had assumed and exercised the powers given to it, and was in the full discharge of its duty to regulate interstate commerce and carry the mails. The validity of such exercise and the exclusiveness of its control had been again and again presented to this court for consideration. It is curious to note the fact that in a large proportion of the cases in respect to interstate commerce brought to this court the question presented was of the validity of State legislation in its bearings upon interstate commerce, and the uniform course of decision has been to declare that it is not within the competency of a State to legislate in such a manner as to obstruct interstate commerce. If a State with its recognized powers of sovereignty is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that State has a power which the State itself does not possess?

As, under the Constitution, power over interstate commerce and the transportation of the mails is vested in the national government, and Congress by virtue of such grant has assumed actual and direct control, it follows that the national government may prevent any

unlawful and forcible interference therewith. But how shall this be accomplished? Doubtless, it is within the competency of Congress to prescribe by legislation that any interference with these matters shall be offenses against the United States, and prosecuted and punished by indictment in the proper courts. But is that the only remedy? Have the vast interests of the nation in interstate commerce, and in the transportation of the mails, no other protection than lies in the possible punishment of those who interfere with it? To ask the question is to answer it. By article 3, section 2, clause 3, of the Federal Constitution it is provided: 'The trial of all crimes except in cases of impeachment shall be by jury; and such trial shall be held in the State where the said crime shall have been committed.' If all the inhabitants of a State, or even a great body of them, should combine to obstruct interstate commerce or the transportation of the mails, prosecutions for such offenses had in such a community would be doomed in advance to failure. And if the certainty of such failure was known, and the national government had no other way to enforce the freedom of interstate commerce and the transportation of the mails than by prosecution and punishment for interference therewith, the whole interests of the nation in these respects would be at the absolute mercy of a portion of the inhabitants of that single State.

But there is no such impotency in the national government. The entire strength of the nation may be used to enforce in any part of the land the full and free exercise of all national powers and the security of all rights entrusted by the Constitution to its care. The strong arm of the national government may be put forth to brush away all obstructions to the freedom of interstate commerce or the transportation of the mails. If the emergency arises, the army of the nation, and all its militia, are at the service of the nation to compel obedience to its laws.

But passing to the second question, is there no other alternative than the use of force on the part of the

executive authorities whenever obstructions arise to the freedom of interstate commerce or the transportation of the mails? Is the army the only instrument by which rights of the public can be enforced and the peace of the nation preserved? Grant that any public nuisance may be forcibly abated either at the instance of the authorities, or by any individual suffering private damage therefrom, the existence of this right of forcible abatement is not inconsistent with nor does it destroy the right of appeal in an orderly way to the court for a judicial determination, and an exercise of their powers by writ of injunction and otherwise to accomplish the same result. . . .

It is obvious from these decisions that while it is not the province of the Government to interfere in any mere matter of private controversy between individuals, or to use its great powers to enforce the rights of one against another, yet, whenever the wrongs complained of are such as affect the public at large, and are in respect of matters which by the Constitution are entrusted to the care of the nation, and concerning which the nation owes the duty to all the citizens of securing to them their common rights, then the mere fact that the Government has no pecuniary interest in the controversy is not sufficient to exclude it from the courts, or prevent it from taking measures therein to fully discharge those constitutional duties.

The national government, given by the Constitution power to regulate interstate commerce, has by express statute assumed jurisdiction over such commerce when carried upon railroads. It is charged, therefore, with the duty of keeping those highways of interstate commerce free from obstruction, for it has always been recognized as one of the powers and duties of a government to remove obstructions from the highway under its control. . . .

. . . A most earnest and eloquent appeal was made to us in eulogy of the heroic spirit of those who threw up their employment, and gave up their means of earning a livelihood, not in defense of their own rights,

but in sympathy for and to assist others whom they believed to be wronged. We yield to none in our admiration of any act of heroism or self-sacrifice, but we may be permitted to add that it is a lesson which cannot be learned too soon or too thoroughly that under this Government of and by the people the means of redress of all wrongs are through the courts and at the ballot-box, and that no wrong, real or fancied, carries with it legal warrant to invite as a means of redress the co-operation of a mob, with its accompanying acts of violence.

We have given to this case the most careful and anxious attention, for we realize that it touches closely questions of supreme importance to the people of this country. Summing up our conclusions, we hold that the Government of the United States is one having jurisdiction over every foot of soil within its territory, and acting directly upon each citizen; that while it is a government of enumerated powers, it has within the limits of those powers all the attributes of sovereignty; that to it is committed power over interstate commerce and the transmission of the mail; that the powers thus conferred upon the national government are not dormant, but have been assumed and put into practical exercise by the legislation of Congress; that in the exercise of those powers it is competent for the nation to remove all obstructions upon highways, natural or artificial, to the passage of interstate commerce or the carrying of the mail; that while it may be competent for the Government (through the executive branch and in the use of the entire executive power of the nation) to forcibly remove all such obstructions, it is equally within its competency to appeal to the civil courts for an inquiry and determination as to the existence and character of any alleged obstructions, and if such are found to exist, or threaten to occur, to invoke the powers of these courts to remove or restrain such obstruction; that the jurisdiction of courts to interfere in such matters by injunction is one recognized from ancient times and by indubitable authority; that such

jurisdiction is not ousted by the fact that the obstructions are accompanied by or consist of acts in themselves violations of the criminal law; that the proceeding by injunction is of a civil character, and may be enforced by proceedings in contempt; that such proceedings are not in execution of the criminal laws of the land; that the penalty for a violation of injunction is no substitute for and no defense to a prosecution for any criminal offenses committed in the course of such violation; that the complaint filed in this case clearly showed an existing obstruction of artificial highways for the passage of interstate commerce and the transmission of the mail -an obstruction not only temporarily existing, but threatening to continue; that under such complaint the circuit court had power to issue its process of injunction; that it having been issued and served on these defendants, the circuit court had authority to inquire whether its orders had been disobeyed, and when it found that they had been, then to proceed under section 725, Revised Statutes, which grants power 'to punish by fine or imprisonment, . . . disobedience, . . . by any party . . . or other person, to any lawful writ, process, order, rule, decree or command,' and enter the order of punishment complained of; and, finally, that the circuit court, having full jurisdiction in the premises, its finding of the fact of disobedience is not open to review on habeas corpus in this or any other court. . . .

We enter into no examination of the Act of 2 July 1890 upon which the circuit court relied mainly to sustain its jurisdiction. It must not be understood from this that we dissent from the conclusions of that court in reference to the scope of the Act, but simply that we prefer to rest our judgment on the broader ground which has been discussed in this opinion, believing it of importance that the principles underlying it should be fully stated and affirmed.

The petition for a writ of habeas corpus is denied.

#### 45. THE UNITED STATES *v.* E. C. KNIGHT COMPANY, 1895

[Very little effort was made by the Government for some time to make use of the Sherman Anti-Trust Act, except against trade unions, and the judgment in this case further discouraged it. The E. C. Knight Company, or the American Sugar Refining Company, had bought the stock of four sugar-refining companies in Philadelphia and controlled ninety-eight per cent. of the manufacture of refined sugar in the United States. The court held that this control did not in itself constitute a restraint of trade, and that although it was alleged 'that the products of these refineries were sold and distributed among the several States and with foreign nations,' 'this was no more than to say that trade and commerce served manufacture to fulfil its function.' It was not until Theodore Roosevelt became President that any further attempt was made to employ the Act against the great trusts.]

FULLER, C.J. . . . In the view which we take of the case, we need not discuss whether because the tentacles which drew the outlying refineries into the dominant corporation were separately put out, therefore there was no combination to monopolize; or, because according to political economists, aggregations of capital may reduce prices, therefore the objection to concentration of power is relieved; or, because others were theoretically left free to go into the business of refining sugar, and the original stockholders of the Philadelphia refineries after becoming stockholders of the American Company might go into competition with themselves, or, parting with that stock, might set up again for themselves, therefore no objectionable restraint was imposed.

The fundamental question is, whether conceding that the existence of a monopoly in manufacture is established by the evidence, that monopoly can be directly suppressed under the Act of Congress in the mode attempted by this bill.

It cannot be denied that the power of a State to protect the lives, health, and property of its citizens, and to preserve good order and the public morals, 'the power to govern men and things within the limits of its dominion,' is a power originally and always belonging to the States, not surrendered by them to the general government, nor directly restrained by the Constitution of the United States, and essentially exclusive. The relief of the citizens of each State from the burden of monopoly and the evils resulting from the restraint of trade among such citizens was left with the States to deal with, and this court has recognized their possession of that power, even to the extent of holding that an employment or business carried on by private individuals, when it becomes a matter of such public interest and importance as to create a common charge or burden upon the citizen; in other words, when it becomes a practical monopoly, to which the citizen is compelled to resort and by means of which a tribute can be exacted from the community, is subject to regulation by the State legislative power. . . . On the other hand, the power of Congress to regulate commerce among the several States is also exclusive. . . . The Constitution does not provide that interstate commerce should be free, but, by the grant of this exclusive power to regulate it, it was left free except as Congress might impose restraints. Therefore it has been determined that the failure of Congress to exercise this exclusive power in any case is an expression of its will that the subject shall be free from restrictions or impositions upon it by the several States, and if a law passed by a State in the exercise of its acknowledged powers comes into conflict with that will, the Congress and the State cannot occupy the position of equal opposing sovereignties, because the Constitution declares its supremacy and that of the laws passed in pursuance thereof; and that which is not supreme must yield to that which is supreme. 'Commerce, undoubtedly, is traffic,' said Chief Justice Marshall, 'but it is something more; it is intercourse. It describes the commercial intercourse

between nations and parts of nations in all its branches, and is regulated by prescribing rules for carrying on that intercourse.' That which belongs to commerce is within the jurisdiction of the United States, but that which does not belong to commerce is within the jurisdiction of the police power of the State.

The argument is that the power to control the manufacture of refined sugar is a monopoly over a necessary of life, to the enjoyment of which by a large part of the population of the United States interstate commerce is indispensable, and that, therefore, the general government in the exercise of the power to regulate commerce may suppress such monopoly directly and set aside the instruments which have created it. But this argument cannot be confined to necessities of life merely, and must include all articles of general consumption. Doubtless the power to control the manufacture of a given thing involves in a certain sense the control of its disposition, but this is a secondary and not the primary sense; and although the exercise of that power may result in bringing the operation of commerce into play, it does not control it, and affects it only incidentally and indirectly. Commerce succeeds to manufacture, and is not a part of it. The power to regulate commerce is the power to prescribe the rule by which commerce shall be governed, and is a power independent of the power to suppress monopoly. But it may operate in repression of monopoly whenever it comes within the rules by which commerce is governed or whenever the transaction is itself a monopoly of commerce.

It is vital that the independence of the commercial power and of the police power, and the delimitation between them, however sometimes perplexing, should always be recognized and observed, for while the one furnishes the strongest bond of union, the other is essential to the autonomy of the States as required by our dual form of government; and acknowledged evils, however grave and urgent they may appear to be, had better be borne, than the risk be run, in the effort to

suppress them, of more serious consequences by resort to expedients of even doubtful constitutionality.

It will be perceived how far-reaching the proposition is that the power of dealing with a monopoly directly may be exercised by the general government whenever interstate or international commerce may be ultimately affected. The regulation of commerce applies to the subjects of commerce, and not to matters of internal police. Contracts to buy, sell, or exchange goods to be transported among the several States, the transportation and its instrumentalities, and articles bought, sold, or exchanged for the purposes of such transit among the States, or put in the way of transit, may be regulated, but this is because they form part of interstate trade or commerce. The fact that an article is manufactured for export to another State does not of itself make it an article of interstate commerce, and the intent of the manufacturer does not determine the time when the article or product passes from the control of the State and belongs to commerce. . . .

And Mr Justice Lamar remarked: 'A situation more paralyzing to the State governments, and more provocative of conflicts between the general government and the States, and less likely to have been what the framers of the Constitution intended, it would be difficult to imagine.' . . .

Contracts, combinations, or conspiracies to control domestic enterprise in manufacture, agriculture, mining production in all its forms, or to raise or lower prices or wages, might unquestionably tend to restrain external as well as domestic trade, but the restraint would be an indirect result, however inevitable and whatever its extent, and such result would not necessarily determine the object of the contract, combination, or conspiracy.

Again, all the authorities agree that in order to vitiate a contract or combination it is not essential that its result should be a complete monopoly; it is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition.

Slight reflection will show that if the national power extends to all contracts and combinations in manufacture, agriculture, mining, and other productive industries, whose ultimate result may affect external commerce, comparatively little of business operations and affairs would be left for State control.

It was in the light of well-settled principles that the Act of 2 July 1890 was framed. Congress did not attempt thereby to assert the power to deal with monopoly directly as such; or to limit and restrict the rights of corporations created by the States or the citizens of the States in the acquisition, control, or disposition of property; or to regulate or prescribe the price or prices at which such property or the products thereof should be sold; or to make criminal the acts of persons in the acquisition and control of property which the States of their residence or creation sanctioned or permitted. Aside from the provisions applicable where Congress might exercise municipal power, what the law struck at was combinations, contracts, and conspiracies to monopolize trade and commerce among the several States or with foreign nations; but the contracts and acts of the defendants related exclusively to the acquisition of the Philadelphia refineries and the business of sugar refining in Pennsylvania, and bore no direct relation to commerce between the States or with foreign nations. The object was manifestly private gain in the manufacture of the commodity, but not through the control of interstate or foreign commerce. It is true that the bill alleged that the products of these refineries were sold and distributed among the several States, and that all the companies were engaged in trade or commerce with the several States and with foreign nations; but this was no more than to say that trade and commerce served manufacture to fulfil its function. . . . There was nothing in the proofs to indicate any intention to put a restraint upon trade or commerce, and the fact, as we have seen, that trade or commerce might be indirectly affected was not enough to entitle complainants to a decree. . . .

## 46. POLLOCK *v.* FARMERS' LOAN AND TRUST COMPANY, 1895

[During the Civil War, Congress had levied an income tax, which the Supreme Court had upheld, but it had been repealed in 1872. The Wilson Act of 1894 included an income tax of two per cent. on incomes above four thousand dollars. This case tested the constitutional validity of the tax, which, it was claimed, was contrary to the clause in Article 1, Section 9, of the Constitution, 'No Capitation, or other direct, tax shall be laid, unless in proportion to the Census or Enumeration herein before directed to be taken.'

On 8 April 1895 the Court held a tax on real estate income invalid unless levied in the manner required by the Constitution for a direct tax. One of the judges, Justice Jackson, was absent through illness, and the Court was evenly divided on the question of a tax on other income. On 20 May the second decision was given with Justice Jackson present. He supported the validity of the tax, but, as Justice Brewer had changed his mind, the court by five to four decided that the whole tax was illegal. This unusual occurrence and the nature of some of the opinions led to violent criticism of the court. The verdict made necessary the adoption of the Sixteenth Amendment (see No. 66).]

FULLER, C. J. . . . Our previous decision was confined to the consideration of the validity of the tax on the income from real estate, and on the income from municipal bonds. . . .

We are now permitted to broaden the field of inquiry, and to determine to which of the two great classes a tax upon a person's entire income, whether derived from rents or products, or otherwise, of real estate, or from bonds, stocks, or other forms of personal property, belongs; and we are unable to conclude that the enforced subtraction from the yield of all the owner's real or personal property, in the manner prescribed, is so different from a tax on the property itself, that it is not a direct, but an indirect, tax in the meaning of the Constitution. . . .

The reasons for the clauses of the Constitution in respect of direct taxation are not far to seek. . . .

The founders anticipated that the expenditures of the States, their counties, cities, and towns, would chiefly be met by direct taxation on accumulated property, while they expected that those of the Federal Government would be for the most part met by indirect taxes. And in order that the power of direct taxation by the general government should not be exercised except on necessity, and, when the necessity arose, should be so exercised as to leave the States at liberty to discharge their respective obligations, and should not be so exercised unfairly and discriminately, as to particular States or otherwise, by a mere majority vote, possibly of those whose constituents were intentionally not subjected to any part of the burden, the qualified grant was made.

Those who made it knew that the power to tax involved the power to destroy, and that, in the language of Chief Justice Marshall, in *McCulloch v. Maryland*, 'the only security against the abuse of this power is found in the structure of the Government itself. In imposing a tax, the legislature acts upon its constituents. This is, in general, a sufficient security against erroneous and oppressive taxation.' And they retained this security by providing that direct taxation and representation in the lower house of Congress should be adjusted on the same measure.

Moreover, whatever the reasons for the constitutional provisions, there they are, and they appear to us to speak in plain language.

It is said that a tax on the whole income of property is not a direct tax in the meaning of the Constitution, but a duty, and, as a duty, leviable without apportionment, whether direct or indirect. We do not think so. Direct taxation was not restricted in one breath, and the restriction blown to the winds in another. . . .

The Constitution prohibits any direct tax, unless in proportion to numbers as ascertained by the census, and, in the light of the circumstances to which we have

referred, is it not an evasion of that prohibition to hold that a general unapportioned tax, imposed upon all property owners as a body for or in respect of their property, is not direct, in the meaning of the Constitution, because confined to the income therefrom?

Whatever the speculative views of political economists or revenue reformers may be, can it be properly held that the Constitution, taken in its plain and obvious sense, and with due regard to the circumstances attending the formation of the Government, authorizes a general unapportioned tax on the products of the farm and the rents of real estate, although imposed merely because of ownership, and with no possible means of escape from payment, as belonging to a totally different class from that which includes the property from whence the income proceeds?

There can be but one answer, unless the constitutional restriction is to be treated as utterly illusory and futile, and the object of its framers defeated. We find it impossible to hold that a fundamental requisition deemed so important as to be enforced by two provisions, one affirmative and one negative, can be refined away by forced distinctions between that which gives value to property and the property itself.

Nor can we perceive any ground why the same reasoning does not apply to capital in personality held for the purpose of income, or ordinarily yielding income, and to the income therefrom. . . .

Personal property of some kind is of general distribution, and so are incomes, though the taxable range thereof might be narrowed through large exemptions. . . .

Nor are we impressed with the contention that, because in the four instances in which the power of direct taxation has been exercised, Congress did not see fit, for reasons of expediency, to levy a tax on personality, this amounts to such a practical construction of the Constitution that the power did not exist, that we must regard ourselves bound by it. We should regret to be compelled to hold the powers of the general government

thus restricted, and certainly we cannot accede to the idea that the Constitution has become weakened by a particular course of inaction under it.

The stress of the argument is thrown, however, on the assertion that an income tax is not a property tax at all; that it is not a real estate tax, or a crop tax, or a bond tax; that it is an assessment upon the taxpayer on account of his money-spending power as shown by his revenue for the year preceding the assessment; that rents received, crops harvested, interest collected, have lost all connection with their origin, and, though once not taxable, have become transmuted, in their new form, into taxable subject-matter; in other words, that income is taxable, irrespective of the source whence it is derived. . . .

Admitting that this Act taxes the income of property, irrespective of its source, still we cannot doubt that such a tax is necessarily a direct tax in the meaning of the Constitution. Elaborate argument is made as to the efficacy and merits of an income tax in general, as on the one hand equal and just, and on the other elastic and certain; not that it is not open to abuse by such deductions and exemptions as might make taxation under it so wanting in uniformity and equality as in substance to amount to deprivation of property without due process of law; not that it is not open to fraud and evasion and is inquisitorial in its methods; but because it is pre-eminently a tax upon the rich, and enables the burden of taxes on consumption and of duties on imports to be sensibly diminished. And it is said that the United States as 'the representative of an indivisible nationality, as a political sovereign equal in authority to any other on the face of the globe, adequate to all emergencies, foreign or domestic, and having at its command for offense and defense and for all governmental purposes all the resources of the nation,' would be 'but a maimed and crippled creation after all,' unless it possesses the power to lay a tax on the income of real and personal property throughout the United States without apportionment.

The power to tax real and personal property and the income from both, there being an apportionment, is conceded; that such a tax is a direct tax in the meaning of the Constitution has not been, and, in our judgment, cannot be successfully denied; and yet we are thus invited to hesitate in the enforcement of the mandate of the Constitution, which prohibits Congress from laying a direct tax on the revenue from property of the citizen without regard to State lines, and in such manner that the States cannot intervene by payment in regulation of their own resources, lest a government of delegated powers should be found to be, not less powerful, but less absolute, than the imagination of the advocate had supposed.

We are not here concerned with the question whether an income tax be or be not desirable, nor whether such a tax would enable the Government to diminish taxes on consumption and duties on imports, and to enter upon what may be believed to be a reform of its fiscal and commercial system. Questions of that character belong to the controversies of political parties, and cannot be settled by judicial decision. In these cases our province is to determine whether this income tax on the revenue from property does or does not belong to the class of direct taxes. If it does, it is, being unapportioned, in violation of the Constitution, and we must so declare. . . .

If it be true that the Constitution should have been so framed that a tax of this kind could be laid, the instrument defines the way for its amendment. In no part of it was greater sagacity displayed. Except that no State, without its consent, can be deprived of its equal suffrage in the Senate, the Constitution may be amended upon the concurrence of two-thirds of both houses, and the ratification of the legislatures or conventions of the several States, or through a Federal convention when applied for by the legislatures of two-thirds of the States, and upon like ratification. The ultimate sovereignty may be thus called into play by a slow and deliberate process,

which gives time for mere hypothesis and opinion to exhaust themselves, and for the sober second thought of every part of the country to be asserted.

We have considered the Act only in respect of the tax on income derived from real estate and from invested personal property, and have not commented on so much of it as bears on gains or profits from business, privileges, or employments, in view of the instances in which taxation on business, privileges, or employments has assumed the guise of an excise tax and been sustained as such.

Being of opinion that so much of the section of this law as lays a tax on income from real and personal property is invalid, we are brought to the question of the effect of that conclusion upon these sections as a whole.

It is elementary that the same statute may be in part constitutional and in part unconstitutional, and, if the parts are wholly independent of each other, that which is constitutional may stand while that which is unconstitutional will be rejected. And in the case before us there is no question as to the validity of this Act, except sections twenty-seven to thirty-seven, inclusive, which relate to the subject which has been under discussion; and, as to them, we think the rule laid down by Chief Justice Shaw in *Warren v. Charlestown* is applicable, that if the different parts 'are so mutually connected with and dependent on each other, as conditions, considerations, or compensations for each other, as to warrant a belief that the legislature intended them as a whole, and that if all could not be carried into effect the legislature would not pass the residue independently, and some parts are unconstitutional, all the provisions which are thus dependent, conditional, or connected must fall with them.' . . .

According to the census, the true valuation of real and personal property in the United States in 1890 was \$65,037,091,197, of which real estate with improvements thereon made up \$39,544,544,333. Of course, from the latter must be deducted, in applying these sections, all unproductive property and all property

whose net yield does not exceed four thousand dollars; but, even with such deductions, it is evident that the income from realty formed a vital part of the scheme for taxation embodied therein. If that be stricken out, and also the income from all invested personal property, bonds, stocks, investments of all kinds, it is obvious that by far the largest part of the anticipated revenue would be eliminated, and this would leave the burden of the tax to be borne by professions, trades, employments, or vocations; and in that way what was intended as a tax on capital would remain in substance a tax on occupations and labor. We cannot believe that such was the intention of Congress. We do not mean to say that an Act laying by apportionment a direct tax on all real estate and personal property, or the income thereof, might not also lay excise taxes on business, privileges, employments, and vocations. But this is not such an Act; and the scheme must be considered as a whole. Being invalid as to the greater part, and falling, as the tax would, if any part were held valid, in a direction which could not have been contemplated except in connection with the taxation considered as an entirety, we are constrained to conclude that sections twenty-seven to thirty-seven, inclusive, of the Act, which became a law, without the signature of the President, on 28 August 1894, are wholly inoperative and void.

Our conclusions may, therefore, be summed up as follows:

First. We adhere to the opinion already announced, that, taxes on real estate being indisputably direct taxes, taxes on the rents or income of real estate are equally direct taxes.

Second. We are of opinion that taxes on personal property, or on the income of personal property, are likewise direct taxes.

Third. The tax imposed by sections twenty-seven to thirty-seven, inclusive, of the Act of 1894, so far as it falls in the income of real estate and of personal property, being a direct tax within the meaning of the

Constitution, and, therefore, unconstitutional and void because not apportioned according to representation, all those sections, constituting one entire scheme of taxation, are necessarily invalid.

Decrees reversed and relief prayed for granted.

47. RICHARD OLNEY'S NOTE ON THE  
VENEZUELA BOUNDARY DISPUTE,  
1895

[The line of the frontier between Venezuela and British Guiana had been in dispute since the former had gained its independence from Spain, and several attempts during the next fifty years to settle the question had failed. The discovery of gold in the Cuyuni valley in 1876 caused the government of Venezuela to raise the issue once more and negotiations were opened in 1879. In 1881 Venezuela appealed to the United States without effect, but in 1886 the Government of the United States offered to Great Britain its good offices, which were refused. In 1887 Venezuela broke off diplomatic relations with Great Britain and appealed to the United States to insist on arbitration 'in the name of the immortal Monroe.' For some years little notice was taken of the dispute in the United States, but in 1894 the publication of a pamphlet, 'British Aggressions in Venezuela: or the Monroe Doctrine on Trial,' by W. L. Scruggs, the Venezuelan Agent in the United States, roused great interest in the question. On 20 July 1895 Secretary of State Richard Olney sent a despatch to Lord Salisbury, the British Prime Minister. In this, after an account of the history of the dispute and the part played by the United States to that date, he proceeded to discuss the origin of the Monroe Doctrine, its historical application, and the standing of the United States in the affairs of the Western Hemisphere which resulted from that doctrine. He ended by asking for a definite decision whether Great Britain would accept arbitration. The statement, that 'the United States is practically sovereign on this continent,' was the most extreme expression of the Monroe Doctrine ever announced by an American statesman.

Lord Salisbury replied in November 1895, denying that the Monroe Doctrine, as a unilateral declaration, could be held to be part of the law of nations, or that it was applicable to the case in question. On 17 December 1895 President Cleveland submitted the correspondence to Congress and in a Message stated that, 'the Monroe Doctrine finds its recognition in those principles of international law which are based upon the theory that every nation shall have its rights protected and its just claims enforced.' He proposed the appointment of a Commission to examine the question and report. However, the British Government by the Treaty of Washington agreed to arbitration with Venezuela, with the stipulation that fifty years' occupation of any territory should make a good title to its possession. The Court of Arbitration gave a unanimous verdict substantially upholding the British claim, but Great Britain, by accepting the claim of the United States to an interest in the question, went a good way towards accepting the Monroe Doctrine.]

I am directed by the President to communicate to you his views upon a subject to which he has given much anxious thought and respecting which he has not reached a conclusion without a lively sense of its great importance as well as of the serious responsibility involved in any action now to be taken.

The important features of the existing situation, as shown by the foregoing recital, may be briefly stated.

1. The title to territory of indefinite but confessedly very large extent is in dispute between Great Britain on the one hand and the South American Republic of Venezuela on the other.

2. The disparity in the strength of the claimants is such that Venezuela can hope to establish her claim only through peaceful methods—through an agreement with her adversary either upon the subject itself or upon an arbitration.

3. The controversy, with varying claims on the part of Great Britain, has existed for more than half a century, during which period many earnest and persistent efforts of Venezuela to establish a boundary by agreement have proved unsuccessful.

4. The futility of the endeavor to obtain a conven-

tional line being recognized, Venezuela for a quarter of a century has asked and striven for arbitration.

5. Great Britain, however, has always and continuously refused to arbitrate, except upon the condition of a renunciation of a large part of the Venezuelan claim and of a concession to herself of a large share of the territory in controversy.

6. By the frequent interposition of its good offices at the instance of Venezuela, by constantly urging and promoting the restoration of diplomatic relations between the two countries, by pressing for arbitration of the disputed boundary, by offering to act as arbitrator, by expressing its grave concern whenever new alleged instances of British aggression upon Venezuelan territory have been brought to its notice, the Government of the United States has made it clear to Great Britain and to the world that the controversy is one in which both its honor and its interests are involved and the continuance of which it cannot regard with indifference.

The accuracy of the foregoing analysis of the existing status cannot, it is believed, be challenged. It shows that status to be such that those charged with the interests of the United States are now forced to determine exactly what those interests are and what course of action they require. It compels them to decide to what extent, if any, the United States may and should intervene in a controversy between and primarily concerning only Great Britain and Venezuela, and to decide how far it is bound to see that the integrity of Venezuelan territory is not impaired by the pretensions of its powerful antagonist. Are any such right and duty devolved upon the United States? If not, the United States has already done all, if not more than all, that a purely sentimental interest in the affairs of the two countries justifies, and to push its interposition further would be unbecoming and undignified and might well subject it to the charge of impertinent intermeddling with affairs with which it has no rightful concern. On the other hand, if any such right and duty exist, their

due exercise and discharge will not permit of any action that shall not be efficient and that, if the power of the United States is adequate, shall not result in the accomplishment of the end in view. The question thus presented, as matter of principle and regard being had to the settled national policy, does not seem difficult of solution. Yet the momentous practical consequences dependent upon its determination require that it should be carefully considered and that the grounds of the conclusion arrived at should be fully and frankly stated.

That there are circumstances under which a nation may justly interpose in a controversy to which two or more other nations are the direct and immediate parties is an admitted canon of international law. The doctrine is ordinarily expressed in terms of the most general character and is perhaps incapable of more specific statement. It is declared in substance that a nation may avail itself of this right whenever what is done or proposed by any of the parties primarily concerned is a serious and direct menace to its own integrity, tranquillity, or welfare. The propriety of the rule when applied in good faith will not be questioned in any quarter. On the other hand, it is an inevitable though unfortunate consequence of the wide scope of the rule that it has only too often been made a cloak for schemes of wanton spoliation and aggrandizement. We are concerned at this time, however, not so much with the general rule as with a form of it which is peculiarly and distinctively American. Washington, in the solemn admonitions of the Farewell Address, explicitly warned his countrymen against entanglements with the politics or the controversies of European Powers.

'Europe [he said] has a set of primary interests which to us have none or a very remote relation. Hence she must be engaged in frequent controversies the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves by artificial ties in the ordinary vicissitudes of her politics or the ordinary combinations and collisions of her friendships or enmities. Our detached and distant

situation invites and enables us to pursue a different course.'

During the Administration of President Monroe this doctrine of the Farewell Address was first considered in all its aspects and with a view to all its practical consequences. The Farewell Address, while it took America out of the field of European politics, was silent as to the part Europe might be permitted to play in America. Doubtless it was thought the latest addition to the family of nations should not make haste to prescribe rules for the guidance of its older members, and the expediency and propriety of serving the Powers of Europe with notice of a complete and distinctive American policy excluding them from interference with American political affairs might well seem dubious to a generation to whom the French alliance, with its manifold advantages to the cause of American independence, was fresh in mind.

Twenty years later, however, the situation had changed. The lately born nation had greatly increased in power and resources, had demonstrated its strength on land and sea and as well in the conflicts of arms as in the pursuits of peace, and had begun to realize the commanding position on this continent which the character of its people, their free institutions, and their remoteness from the chief scene of European contentions combined to give to it. The Monroe Administration therefore did not hesitate to accept and apply the logic of the Farewell Address by declaring in effect that American non-intervention in European affairs necessarily implied and meant European non-intervention in American affairs. . . .

The Monroe Administration, however, did not content itself with formulating a correct rule for the regulation of the relations between Europe and America. It aimed at also securing the practical benefits to result from the application of the rule. Hence the message just quoted declared that the American continents were fully occupied and were not the subjects for future colonization by European Powers. To this spirit and

this purpose, also, are to be attributed the passages of the same message which treat any infringement of the rule against interference in American affairs on the part of the Powers of Europe as an act of unfriendliness to the United States. It was realized that it was futile to lay down such a rule unless its observance could be enforced. It was manifest that the United States was the only Power in this hemisphere capable of enforcing it. It was therefore courageously declared not merely that Europe ought not to interfere in American affairs, but that any European Power doing so would be regarded as antagonizing the interests and inviting the opposition of the United States.

That the rule thus defined has been the accepted public law of this country ever since its promulgation cannot fairly be denied. Its pronouncement by the Monroe Administration at that particular time was unquestionably due to the inspiration of Great Britain, who at once gave to it an open and unqualified adhesion which has never been withdrawn.

The foregoing enumeration not only shows the many instances wherein the rule in question has been affirmed and applied, but also demonstrates that the Venezuelan boundary controversy is in any view far within the scope and spirit of the rule as uniformly accepted and acted upon. A doctrine of American public law thus long and firmly established and supported could not easily be ignored in a proper case for its application, even were the considerations upon which it is founded obscure or questionable. No such objection can be made, however, to the Monroe Doctrine understood and defined in the manner already stated. It rests, on the contrary, upon facts and principles that are both intelligible and incontrovertible. That distance and three thousand miles of intervening ocean make any permanent political union between an European and an American State unnatural and inexpedient will hardly be denied. But physical and geographical considerations are the least of the objections to such a union. Europe, as Washington observed, has a set of primary

interests which are peculiar to herself. America is not interested in them, and ought not to be vexed or complicated with them. Each great European Power, for instance, to-day maintains enormous armies and fleets in self-defense and for protection against any other European Power or Powers. What have the States of America to do with that condition of things, or why should they be impoverished by wars or preparations for wars with whose causes or results they can have no direct concern? If all Europe were to suddenly fly to arms over the fate of Turkey, would it not be preposterous that any American State should find itself inextricably involved in the miseries and burdens of the contest? If it were, it would prove to be a partnership in the cost and losses of the struggle but not in any ensuing benefits.

What is true of the material, is no less true of what may be termed the moral interests involved. Those pertaining to Europe are peculiar to her and are entirely diverse from those pertaining and peculiar to America. Europe as a whole is monarchical, and, with the single important exception of the Republic of France, is committed to the monarchical principle. America, on the other hand, is devoted to the exactly opposite principle—to the idea that every people has an inalienable right of self-government—and, in the United States of America, has furnished to the world the most conspicuous and conclusive example and proof of the excellence of free institutions, whether from the stand-point of national greatness or of individual happiness. It cannot be necessary, however, to enlarge upon this phase of the subject—whether moral or material interests be considered, it cannot but be universally conceded that those of Europe are irreconcilably diverse from those of America, and that any European control of the latter is necessarily both incongruous and injurious. If, however, for the reasons stated the forcible intrusion of European Powers into American politics is to be deprecated—if, as it is to be deprecated, it should be resisted and prevented—such resistance and prevention must come from the United States. They would come

from it, of course, were it made the point of attack. But, if they come at all, they must also come from it when any other American State is attacked, since only the United States has the strength adequate to the exigency.

Is it true, then, that the safety and welfare of the United States are so concerned with the maintenance of the independence of every American State as against any European Power as to justify and require the interposition of the United States whenever that independence is endangered? The question can be candidly answered in but one way. The States of America, South as well as North, by geographical proximity, by natural sympathy, by similarity of governmental constitutions, are friends and allies, commercially and politically, of the United States. To allow the subjugation of any of them by an European Power is, of course, to completely reverse that situation and signifies the loss of all the advantages incident to their natural relations to us. But that is not all. The people of the United States have a vital interest in the cause of popular self-government. They have secured the right for themselves and their posterity at the cost of infinite blood and treasure. They have realized and exemplified its beneficent operation by a career unexampled in point of natural greatness or individual felicity. They believe it to be for the healing of all nations, and that civilization must either advance or retrograde accordingly as its supremacy is extended or curtailed. Imbued with these sentiments, the people of the United States might not impossibly be wrought up to an active propaganda in favor of a cause so highly valued both for themselves and for mankind. But the age of the Crusades has passed, and they are content with such assertion and defense of the right of popular self-government as their own security and welfare demand. It is in that view more than in any other that they believe it not to be tolerated that the political control of an American State shall be forcibly assumed by an European Power.

The mischiefs apprehended from such a source are none the less real because not immediately imminent in

any specific case, and are none the less to be guarded against because the combination of circumstances that will bring them upon us cannot be predicted. The civilized States of Christendom deal with each other on substantially the same principles that regulate the conduct of individuals. The greater its enlightenment, the more surely every State perceives that its permanent interests require it to be governed by the immutable principles of right and justice. Each, nevertheless, is only too liable to succumb to the temptations offered by seeming special opportunities for its own aggrandizement, and each would rashly imperil its own safety were it not to remember that for the regard and respect of other States it must be largely dependent upon its own strength and power. To-day the United States is practically sovereign on this continent, and its fiat is law upon the subjects to which it confines its interposition. Why? It is not because of the pure friendship or good will felt for it. It is not simply by reason of its high character as a civilized State, nor because wisdom and justice and equity are the invariable characteristics of the dealings of the United States. It is because, in addition to all other grounds, its infinite resources combined with its isolated position render it master of the situation and practically invulnerable as against any or all other Powers.

All the advantages of this superiority are at once imperiled if the principle be admitted that European Powers may convert American States into colonies or provinces of their own. The principle would be eagerly availed of, and every Power doing so would immediately acquire a base of military operations against us. What one Power was permitted to do could not be denied to another, and it is not inconceivable that the struggle now going on for the acquisition of Africa might be transferred to South America. If it were, the weaker countries would unquestionably be soon absorbed, while the ultimate result might be the partition of all South America between the various European Powers. The disastrous consequences to the United States of such a

condition of things are obvious. The loss of prestige, of authority, and of weight in the councils of the family of nations, would be among the least of them. Our only real rivals in peace as well as enemies in war should be found located at our very doors. Thus far in our history we have been spared the burdens and evils of immense standing armies and all the other accessories of huge warlike establishments, and the exemption has largely contributed to our national greatness and wealth as well as to the happiness of every citizen. But, with the Powers of Europe permanently encamped on American soil, the ideal conditions we have thus far enjoyed cannot be expected to continue. We too must be armed to the teeth; we too must convert the flower of our male population into soldiers and sailors, and by withdrawing them from the various pursuits of peaceful industry, we too must practically annihilate a large share of the productive energy of the nation.

## 48. THE PRESIDENTIAL ELECTION OF 1896

[This election was one of the turning-points of recent American political history.

The agitation for free silver, which followed the Coinage Act of 1873 (see No. 28), led to the passage in 1878, over President Hayes' veto, of the Bland-Allison Act, an unsatisfactory compromise which enacted that the Government must purchase not less than two and not more than four million dollars worth of silver a month to be coined in dollars at the legal ratio with gold. The minimum amount, to which successive Secretaries of the Treasury carefully kept, was not enough seriously to affect the issue. In 1890 the supporters of silver in Congress forced through the Sherman Silver Purchase Act, which went further by enacting that the Government must purchase four and a half million ounces of silver a month at the market price, practically the entire output of American silver. In 1893 a serious commercial

crisis enabled the Democratic President, Cleveland, to obtain the repeal of the Sherman Act. But the effect was to split the Democratic Party.

In 1892 the Populists had taken the field in the Presidential election (see No. 42). In 1896 the split in the Democratic party was completed. At the party convention at Chicago, in July, the young Senator, William Jennings Bryan, from Nebraska, secured the nomination, after one of the greatest political speeches in American history, largely on the issue of the gold standard. The Populists also chose Bryan as their candidate, and the result was an election in which Bryan, as representative of the Radicals, but especially of the western farmers, stood against the interests of Big Business.

The Republicans nominated McKinley, author of a famous tariff measure. He was the protégé of Marcus Alonzo Hanna, the greatest of American political 'bosses,' an Ohio capitalist. Hanna set up a tremendous campaign fund and organization for McKinley, who was elected by a popular majority of nearly a million and an electoral majority of 292 to 155 votes. But American politics had received a shock, and the election heralded an era of reform which was to be inaugurated by President Theodore Roosevelt five years later.

The Editorial from the *New York Tribune* of November 1896 shows well the violence of the feeling aroused by Bryan's campaign among the supporters of 'sound money' and the traditional economic policy.

Vachel Lindsay's poem describes one of the greatest electioneering contests in history. For English readers these notes may be useful. 'The elephant plutocrats' refers to the elephant, which is the emblem of the Republican party. The Platte is the river of Nebraska, from which State Bryan came. The 'new-born States' refers to the States of the West recently admitted into the Union, Washington, Montana, North and South Dakota in 1889, Wyoming and Idaho in 1890, and Utah in 1896, all of which, except North Dakota, supported Bryan in the election. Plymouth Rock was the place where the Pilgrim Fathers landed in 1620 and represented the New England States. 'Scalawags' was a term invented for the Republican supporters in the Southern States during the period of Reconstruction and is here applied to the 'gold Democrats.'

Altgeld was Governor of Illinois (see No. 44), of which State the capital was Springfield. 'Pitchfork' Tillman was a Governor and a famous Populist leader in South Carolina,

and Platt a Senator and the notorious Republican boss of New York State.]

(a) *W. J. Bryan's Cross of Gold Speech,  
8 July 1896*

I would be presumptuous, indeed, to present myself against the distinguished gentlemen to whom you have listened if this were a mere measuring of abilities; but this is not a contest between persons. The humblest citizen in all the land, when clad in the armor of a righteous cause, is stronger than all the hosts of error. I come to speak to you in defense of a cause as holy as the cause of liberty—the cause of humanity.

When this debate is concluded, a motion will be made to lay upon the table the resolution offered in commendation of the Administration, and also, the resolution offered in condemnation of the Administration. We object to bringing this question down to the level of persons. The individual is but an atom; he is born, he acts, he dies; but principles are eternal; and this has been a contest over a principle.

Never before in the history of this country has there been witnessed such a contest as that through which we have just passed. Never before in the history of American politics has a great issue been fought out as this issue has been, by the voters of a great party. On the fourth of March 1893, a few Democrats, most of them members of Congress, issued an address to the Democrats of the nation, asserting that the money question was the paramount issue of the hour; declaring that a majority of the Democratic party had the right to control the action of the party on this paramount issue; and concluding with the request that the believers in the free coinage of silver in the Democratic party should organize, take charge of, and control the policy of the Democratic party. Three months later, at Memphis, an organization was perfected, and the silver Democrats went forth openly and courageously proclaiming their belief, and declaring that, if successful,

they would crystallize into a platform the declaration which they had made. Then began the struggle. With a zeal approaching the zeal which inspired the Crusaders who followed Peter the Hermit, our silver Democrats went forth from victory unto victory until they are now assembled, not to discuss, not to debate, but to enter up the judgment already rendered by the plain people of this country. In this contest brother has been arrayed against brother, father against son. The warmest ties of love, acquaintance, and association have been disregarded; old leaders have been cast aside when they have refused to give expression to the sentiments of those whom they would lead, and new leaders have sprung up to give direction to this cause of truth. Thus has the contest been waged, and we have assembled here under as binding and solemn instructions as were ever imposed upon representatives of the people.

We do not come as individuals. As individuals we might have been glad to compliment the gentleman from New York [Senator Hill], but we know that the people for whom we speak would never be willing to put him in a position where he could thwart the will of the Democratic party. I saw it was not a question of persons; it was a question of principle, and it is not with gladness, my friends, that we find ourselves brought into conflict with those who are now arrayed on the other side.

The gentleman [ex-Governor Russell] who preceded me spoke of the State of Massachusetts; let me assure him that not one present in all this convention entertains the least hostility to the people of the State of Massachusetts, but we stand here representing people who are the equals, before the law, of the greatest citizens in the State of Massachusetts.

When you [turning to the gold delegates] come before us and tell us that we are about to disturb your business interests, we reply that you have disturbed our business interests by your course.

We say to you that you have made the definition of a

business man too limited in its application. The man who is employed for wages is as much a business man as his employer; the attorney in a country town is as much a business man as the corporation counsel in a great metropolis; the merchant at the cross-roads store is as much a business man as the merchant of New York; the farmer who goes forth in the morning and toils all day, who begins in the spring and toils all summer, and who by the application of brain and muscle to the natural resources of the country created wealth, is as much a business man as the man who goes upon the Board of Trade and bets upon the price of grain; the miners who go down a thousand feet into the earth, or climb two thousand feet upon the cliffs, and bring forth from their hiding places the precious metals to be poured into the channels of trade are as much business men as the few financial magnates who, in a back room, corner the money of the world. We come to speak of this broader class of business men.

Ah, my friends, we say not one word against those who live upon the Atlantic Coast, but the hardy pioneers who have braved all the dangers of the wilderness, who have made the desert to bloom as the rose—the pioneers away out there [pointing to the West] who rear their children near to Nature's heart, where they can mingle their voices with the voices of the birds—out there where they have erected schoolhouses for the education of their young, churches where they praise their Creator, and cemeteries where rest the ashes of their dead—these people, we say, are as deserving of the consideration of our party as any people in this country. It is for these that we speak. We do not come as aggressors. Our war is not a war of conquest; we are fighting in the defense of our homes, our families, and posterity. We have petitioned, and our petitions have been scorned; we have entreated, and our entreaties have been disregarded; we have begged, and they have mocked when our calamity came. We beg no longer; we entreat no more; we petition no more. We defy them!

The gentleman from Wisconsin [Vilas] has said that he fears a Robespierre. My friends, in this land of the free you need not fear that a tyrant will spring up from among the people. What we need is an Andrew Jackson to stand, as Jackson stood, against the encroachments of organized wealth.

They tell us that this platform was made to catch votes. We reply to them that changing conditions make new issues; that the principles upon which Democracy rests are as everlasting as the hills, but they must be applied to new conditions as they arise. Conditions have arisen, and we are here to meet those conditions. They tell us that the income tax ought not to be brought in here; that it is a new idea. They criticize us for our criticism of the Supreme Court of the United States. My friends, we have not criticized; we have simply called attention to what you already know. If you want criticisms, read the dissenting opinions of the court. There you will find criticisms. They say that we passed an unconstitutional law; we deny it. The income tax was not unconstitutional when it was passed; it was not unconstitutional when it went before the Supreme Court for the first time; it did not become unconstitutional until one of the judges changed his mind, and we cannot be expected to know when a judge will change his mind. The income tax is just. It simply intends to put the burden of government justly upon the backs of the people. I am in favor of an income tax. When I find a man who is not willing to bear his share of the burdens of the government which protects him, I find a man who is unworthy to enjoy the blessings of a government like ours.

They say that we are opposing national bank currency; it is true. If you will read what Thomas Benton said, you will find he said that, in searching history, he could find but one parallel to Andrew Jackson; that was Cicero, he destroyed the conspiracy of Cataline and saved Rome. Benton said that Cicero only did for Rome what Jackson did for us when he destroyed the bank conspiracy and saved America. We say in our

platform we believe that the right to coin and issue money is a function of government. We believe it. We believe that it is a part of sovereignty, and can no more with safety be delegated to private individuals than we could afford to delegate to private individuals the power to make penal statutes or levy taxes. Mr Jefferson, who was once regarded as good Democratic authority, seems to have differed in opinion from the gentleman who has addressed us on the part of the minority. Those who are opposed to this proposition tell us that the issue of paper money is a function of the banks, and that the government ought to go out of the banking business. I stand with Jefferson rather than with them, and tell them, as he did, that the issue of money is a function of government, and that the banks ought to go out of the governing business.

They complain about the plank which declares against life tenure in office. They have tried to strain it to mean that which it does not mean. What we oppose by that plank is the life tenure which is being built up in Washington, and which excludes from participation in official benefits the humbler members of society.

Let me call your attention to two or three important things. The gentleman from New York says that he will propose an amendment to the platform providing that the proposed change in our monetary system shall not affect contracts already made. Let me remind you that there is no intention of affecting these contracts which according to present laws are made payable in gold; but if he means to say that we cannot change our monetary system without protecting those who have loaned money before the change was made, I desire to ask him where, in law or morals, he can find justification for not protecting the debtors when the Act of 1873 was passed, if he now insists that we must protect the creditors.

He says he will also propose an amendment which will provide for the suspension of free coinage if we fail to maintain the parity within a year. We reply that

when we advocate a policy which we believe will be successful, we are not compelled to raise a doubt as to our own sincerity by suggesting what we shall do if we fail. I ask him, if he would apply his logic to us, why does he not apply it to himself? He says he wants this country to try to secure an international agreement. Why does he not tell us what he is going to do if he fails to secure an international agreement? There is more reason for him to do that than there is for us to provide against the failure to maintain the parity. Our opponents have tried for twenty years to secure an international agreement, and those are waiting for it most patiently who do not want it at all.

And now, my friends, let me come to the paramount issue. If they ask us why it is that we say more on the money question than we say upon the tariff question, I reply that, if protection has slain its thousands, the gold standard has slain its tens of thousands. If they ask us why we do not embody in our platforms all the things that we believe in, we reply that when we have restored the money of the Constitution, all other necessary reform will be possible; but that until this is done, there is no other reform that can be accomplished.

Why is it that within three months such a change has come over the country? Three months ago when it was confidently asserted that those who believed in the gold standard would frame our platform and nominate our candidates, even the advocates of the gold standard did not think that we could elect a President. And they had good reason for their doubt, because there is scarcely a State here to-day asking for the gold standard which is not in the absolute control of the Republican party. But note the change. Mr McKinley was nominated at St Louis upon a platform which declared for the maintenance of the gold standard until it can be changed into bimetallism by international agreement. Mr McKinley was the most popular man among the Republicans, and three months ago everybody in the Republican party prophesied his election. How is it to-day? Why, the man who was once pleased

to think that he looked like Napoleon—that man shudders to-day when he remembers that he was nominated on the anniversary of the battle of Waterloo.

Not only that, but as he listens, he can hear with ever-increasing distinctness the sound of the waves as they beat upon the lonely shores of St Helena.

Why this change? Ah, my friends, is not the reason for the change evident to any one who will look at the matter? No private character, however pure, no personal popularity, however great, can protect from the avenging wrath of an indignant people a man who will declare that he is in favor of fastening the gold standard upon this country, or who is willing to surrender the right of self-government and place the legislative control of our affairs in the hands of foreign potentates and powers.

We go forth confident that we shall win. Why? Because upon the paramount issue of this campaign there is not a spot of ground upon which the enemy will dare to challenge battle. If they tell us that the gold standard is a good thing, we shall point to their platform and tell them that their platform pledges the party to get rid of the gold standard and substitute bimetallism. If the gold standard is a good thing, why try to get rid of it? I call your attention to the fact that some of the very people who are in this Convention to-day and who tell us that we ought to declare in favor of international bimetallism—thereby declaring that the gold standard is wrong and that the principle of bimetallism is better—these very people four months ago were open and avowed advocates of the gold standard, and were then telling us that we could not legislate two metals together, even with the aid of all the world. If the gold standard is a good thing, we ought to declare in favor of its retention and not in favor of abandoning it; and if the gold standard is a bad thing why should we wait until other nations are willing to help us to let go? Here is the line of battle, and we care not upon which issue they force the fight; we are prepared to meet them on either issue or on both. If they tell us that

the gold standard is the standard of civilization, we reply to them that this, the most enlightened of all the nations of the earth, has never declared for a gold standard and that both the great parties this year are declaring against it. If the gold standard is the standard of civilization, why, my friends, should we not have it? If they come to meet us on that issue we can present the history of our nation. More than that; we can tell them that they will search the pages of history in vain to find a single instance where the common people of any land have ever declared themselves in favor of the gold standard. They can find where the holders of fixed investments have declared for a gold standard, but not where the masses have. Mr Carlisle said in 1878 that this was a struggle between the 'idle holders of idle capital' and 'the struggling masses, who produce the wealth and pay the taxes of the country,' and, my friends, the question we are to decide is: Upon which side will the Democratic Party fight: upon the side of 'the idle holders of idle capital' or upon the side of 'the struggling masses'? That is the question which the party must answer first, and then it must be answered by each individual hereafter. The sympathies of the Democratic Party, as shown by the platform, are on the side of the struggling masses who have ever been the foundation of the Democratic Party. There are two ideas of government. There are those who believe that if you will only legislate to make the well-to-do prosperous, their prosperity will leak through on those below. The Democratic idea, however, has been that if you make the masses prosperous, their prosperity will find its way up through every class which rests upon them.

You come to us and tell us that the great cities are in favor of the gold standard; we reply that the great cities rest upon our broad and fertile prairies. Burn down your cities and leave our farms, and your cities will spring up again as if by magic; but destroy our farms, and the grass will grow in the streets of every city in the country.

My friends, we declare that this nation is able to legislate for its own people on every question, without waiting for the aid or consent of any other nation on earth; and upon that issue we expect to carry every State in the Union. I shall not slander the inhabitants of the fair State of Massachusetts nor the inhabitants of the State of New York by saying that, when they are confronted with the proposition, they will declare that this nation is not able to attend to its own business. It is the issue of 1776 over again. Our ancestors, when but three million in number, had the courage to declare their political independence of every other nation; shall we, their descendants, when we have grown to seventy millions, declare that we are less independent than our forefathers?

No, my friends, that will never be the verdict of our people. Therefore, we care not upon what lines the battle is fought. If they say bimetallism is good, but that we cannot have it until other nations help us, we reply, that instead of having a gold standard because England has, we will restore bimetallism, and then let England have bimetallism because the United States has it. If they dare to come out in the open field and defend the gold standard as a good thing, we will fight them to the uttermost. Having behind us the producing masses of this nation and the world, supported by the commercial interests, the laboring interests, and the toilers everywhere, we will answer their demand for a gold standard by saying to them: You shall not press down upon the brow of labor this crown of thorns, you shall not crucify mankind upon a cross of gold.

(b) '*New York Tribune*,' November 1896

. . . The thing was conceived in iniquity and was brought forth in sin. It had its origin in a malicious conspiracy against the honor and integrity of the nation. It gained such monstrous growth as it enjoyed from an assiduous culture of the basest passions of the least worthy members of the community. It has been

defeated and destroyed because right is right and God is God. Its nominal head was worthy of the cause. Nominal, because the wretched, raittle-pated boy, posing in vapid vanity and mouthing resounding rottenness, was not the real leader of that league of hell. He was only a puppet in the blood-imbued hands of — the anarchist, and — the revolutionist, and other desperadoes of that stripe. But he was a willing puppet, Bryan was, willing and eager. Not one of his masters was more apt than he at lies and forgeries and blasphemies and all the nameless iniquities of that campaign against the Ten Commandments. He goes down with the cause, and must abide with it in the history of infamy. He had less provocation than Benedict Arnold, less intellectual force than Aaron Burr, less manliness and courage than Jefferson Davis. He was the rival of them all in deliberate wickedness and treason to the Republic. His name belongs with theirs, neither the most brilliant nor the most hateful in the list. Good riddance to it all, to conspiracy and conspirators, and to the foul menace of repudiation and anarchy against the honor and life of the Republic. . . .

(c) *Bryan, Bryan, Bryan, Bryan*

THE CAMPAIGN OF EIGHTEEN NINETY-SIX, AS VIEWED AT  
THE TIME BY A SIXTEEN-YEAR-OLD, ETC.

IN a nation of one hundred fine, mob-hearted, lynching,  
relenting, repenting millions,  
There are plenty of sweeping, swinging, stinging, gorgeous  
things to shout about,  
And knock your old blue devils out.

I brag and chant of Bryan, Bryan, Bryan,  
Candidate for president who sketched a silver Zion,  
The one American Poet who could sing outdoors,  
He brought in tides of wonder, of unprecedented splendor  
Wild roses from the plains, that made hearts tender,

All the funny circus silks  
Of politics unfurled,  
Bartlett pears of romance that were honey at the cores,  
And torchlights down the street, to the end of the world.

There were truths eternal in the gab and tittle-tattle.  
There were real heads broken in the fustian and the rattle.  
There were real lines drawn :  
Not the silver and the gold,  
But Nebraska's cry went eastward against the dour and old,  
The mean and cold.

It was eighteen ninety-six, and I was just sixteen  
And Altgeld ruled in Springfield, Illinois,  
When there came from the sunset Nebraska's shout of joy :  
In a coat like a deacon, in a black Stetson hat  
He scourged the elephant plutocrats  
With barbed wire from the Platte.  
The scales dropped from their mighty eyes.  
They saw that summer's noon  
A tribe of wonders coming  
To a marching tune.

Oh, the longhorns from Texas,  
The jay hawks from Kansas,  
The plop-eyed bungaroo and giant giassicus,  
The varmint, chipmunk, bugaboo,  
The horned-toad, prairie-dog and ballyhoo,  
From all the newborn states arow,  
Bidding the eagles of the west fly on,  
Bidding the eagles of the west fly on.  
The fawn, proctactyl and thing-a-ma-jig.  
The rakaboor, the hellangone,  
The whangdoodle, batfowl and pig,  
The coyote, wild-cat and grizzly in a glow,  
In a miracle of health and speed, the whole breed abreast,  
They leaped the Mississippi, blue border of the West,  
From the Gulf to Canada, two thousand miles long :—  
Against the towns of Tubal Cain,  
Ah—sharp was their song.  
Against the ways of Tubal Cain, too cunning for the  
young,  
The longhorn calf, the buffalo and wampus gave tongue.

These creatures were defending things Mark Hanna never  
dreamed:  
The moods of airy childhood that in desert dews gleamed,  
The gossamers and whimsies,  
The monkeyshines and didoes  
Rank and strange  
Of the canyons and the range,  
The ultimate fantasies  
Of the far western slope,  
And of prairie schooner children  
Born beneath the stars,  
Beneath falling snows,  
Of the babies born at midnight  
In the sod huts of lost hope,  
With no physician there,  
Except a Kansas prayer,  
With the Indian raid a howling through the air.  
And all these in their helpless days  
By the dour East oppressed,  
Mean paternalism  
Making their mistakes for them,  
Crucifying half the West,  
Till the whole Atlantic coast  
Seemed a giant spider's nest.

And these children and their sons  
At last rode through the cactus,  
A cliff of mighty cowboys  
On the lope,  
With gun and rope.  
And all the way to frightened Maine the old East heard  
them call,  
And saw our Bryan by a mile lead the wall  
Of men and whirling flowers and beasts,  
The bard and the prophet of them all.  
Prairie avenger, mountain lion,  
Bryan, Bryan, Bryan, Bryan,  
Gigantic troubadour, speaking like a siege gun,  
Smashing Plymouth Rock with his boulders from the  
West,  
And just a hundred miles behind, tornadoes piled across  
the sky,  
Blotting out sun and moon,  
A sign on high.

Headlong, dazed and blinking in the weird green light,  
The scalawags made moan,  
Afraid to fight.

## II

When Bryan came to Springfield, and Altgeld gave him greeting,  
Rochester was deserted, Divernon was deserted,  
Mechanicsburg, Riverton, Chickenbristle, Cotton Hill,  
Empty: for all Sangamon drove to the meeting—  
In silver-decked racing cart,  
Buggy, buckboard, carryall,  
Carriage, phaeton, whatever would haul,  
And silver-decked farm-wagons gritted, banged and rolled,  
With the new tale of Bryan by the iron tires told.

The State House loomed afar,  
A speck, a hive, a football,  
A captive balloon!  
And the town was all one spreading wing of bunting,  
plumes, and sunshine,  
Every rag and flag, and Bryan picture sold,  
When the rigs in many a dusty line  
Jammed our streets at noon,  
And joined the wild parade against the power of gold.

We roamed, we boys from High School,  
With mankind,  
While Springfield gleamed,  
Silk-lined.  
Oh, Tom Dines, and Art Fitzgerald,  
And the gangs that they could get!  
I can hear them yelling yet.  
Helping the incantation,  
Defying aristocracy,  
With every bridle gone,  
Ridding the world of the low down mean,  
Bidding the eagles of the West fly on,  
Bidding the eagles of the West fly on,  
We were bully, wild and woolly,  
Never yet curried below the knees.  
We saw flowers in the air,  
Fair as the Pleiades, bright as Orion,  
—Hopes of all mankind,  
Made rare, resistless, thrice refined.

Oh, we bucks from every Springfield ward!  
Colts of democracy—  
Yet time-winds out of Chaos from the star-fields of the  
Lord.

The long parade rolled on. I stood by my best girl.  
She was a cool young citizen, with wise and laughing  
eyes.  
With my necktie by my ear, I was stepping on my dear,  
But she kept like a pattern, without a shaken curl.

She wore in her hair a brave prairie rose.  
Her gold chums cut her, for that was not the pose.  
No Gibson Girl would wear it in that fresh way.  
But we were fairy Democrats, and this was our day.

The earth rocked like the ocean, the sidewalk was a deck.  
The houses for the moment were lost in the wide wreck.  
And the bands played strange and stranger music as they  
trailed along.  
Against the ways of Tubal Cain,  
Ah, sharp was their song!  
The demons in the bricks, the demons in the grass,  
The demons in the bank-vaults peered out to see us pass,  
And the angels in the trees, the angels in the grass,  
The angels in the flags, peered out to see us pass.  
And the sidewalk was our chariot, and the flowers bloomed  
higher,  
And the street turned to silver and the grass turned to fire,  
And then it was but grass, and the town was there again,  
A place for women and men.

## III

Then we stood where we could see  
Every band,  
And the speaker's stand.  
And Bryan took the platform.  
And he was introduced.  
And he lifted his hand  
And cast a new spell.  
Progressive silence fell  
In Springfield,

In Illinois,

Around the world.

Then we heard these glacial boulders across the prairie rolled:

*'The people have a right to make their own mistakes. . . .  
You shall not crucify mankind  
Upon a cross of gold.'*

And everybody heard him—  
In the streets and State House yard.

And everybody heard him

In Springfield,

In Illinois,

Around and around and around the world,

That danced upon its axis

And like a darling broncho whirled.

## IV

July, August, suspense.

Wall Street lost to sense.

August, September, October,

More suspense,

And the whole East down like a wind-smashed fence.

Then Hanna to the rescue,

Hanna of Ohio,

Rallying the roller-tops,

Rallying the bucket-shops.

Threatening drouth and death,

Promising manna,

Rallying the trusts against the bawling flannelmouth;

Invading misers' cellars,

Tin-cans, socks,

Melting down the rocks,

Pouring out the long green to a million workers,

Spondulix by the mountain-load, to stop each new tornado,

And beat the cheapskate, blatherskite,

Populistic, anarchistic,

Deacon—desperado.

## V

Election night at midnight:

Boy Bryan's defeat.

Defeat of western silver.

Defeat of the wheat.

Victory of letterfiles  
And plutocrats in miles  
With dollar signs upon their coats,  
Diamond watchchains on their vests  
And spats on their feet.  
Victory of custodians,  
Plymouth Rock,  
And all that inbred landlord stock.  
Victory of the neat.  
Defeat of the aspen groves of Colorado valleys,  
The blue bells of the Rockies,  
And blue bonnets of old Texas,  
By the Pittsburg alleys.  
Defeat of alfalfa and the Mariposa lily.  
Defeat of the Pacific and the long Mississippi.  
Defeat of the young by the old and silly.  
Defeat of tornadoes by the poison vats supreme.  
Defeat of my boyhood, defeat of my dream.

Where is McKinley, that respectable McKinley,  
The man without an angle or a tangle,  
Who soothed down the city man and soothed down the  
farmer,  
The German, the Irish, the Southerner, the Northerner,  
Who climbed every greasy pole, and slipped through every  
crack;  
Who soothed down the gambling hall, the bar-room, the  
church,  
The devil vote, the angel vote, the neutral vote,  
The desperately wicked, and their victims on the rack,  
The gold vote, the silver vote, the brass vote, the lead vote,  
Every vote? . . .

Where is McKinley, Mark Hanna's McKinley,  
His slave, his echo, his suit of clothes?  
Gone to join the shadows, with the pomps of that time,  
And the flame of that summer's prairie rose.

Where is Cleveland whom the Democratic platform  
Read from the party in a glorious hour,  
Gone to join the shadows with pitchfork Tillman,  
And sledge-hammer Altgeld who wrecked his power.

Where is Hanna, bulldog Hanna.  
Low-browed Hanna, who said: 'Stand pat'?  
Gone to his place with old Pierpont Morgan.  
Gone somewhere . . . with lean rat Platt.

Where is Roosevelt, the young dude cowboy,  
Who hated Bryan, then aped his way?  
Gone to join the shadows with mighty Cromwell  
And tall King Saul, till the Judgment day.

Where is Altgeld, brave as the truth,  
Whose name the few still say with tears?  
Gone to join the ironies with Old John Brown,  
Whose fame rings loud for a thousand years.

Where is that boy, that Heaven-born Bryan,  
That Homer Bryan, who sang from the West?  
Gone to join the shadows with Altgeld the Eagle,  
Where the kings and the slaves and the troubadours rest.

VACHEL LINDSAY.

#### 49. McKINLEY'S WAR MESSAGE, 1898

[Ever since the beginning of the century the United States had had a special interest in Cuba, which belonged to Spain, and since the Civil War her economic interests in the island had greatly increased. In 1895 the Cubans rose in revolt, not for the first time, and feeling in the United States rose high against Spain. On 15 February 1898 the United States battleship *Maine* was blown up in Havana harbour in mysterious circumstances that have never been explained. President McKinley demanded an immediate armistice in the Cuban War and the acceptance by Spain of American mediation. On 9 April the Spanish Government agreed to these terms, but McKinley under strong popular pressure sent Congress on 11 April a message, which he had written before receiving the Spanish reply, giving a most misleading account of the circumstances, just mentioning at the close the Spanish surrender, and throwing the decision on Congress. It responded on 20 April by a Joint Resolution for war.]

EXECUTIVE MANSION,  
11 April 1898.

*To the Congress of the United States:*

Obedient to that precept of the Constitution which commands the President to give from time to time to the Congress information of the state of the Union and to recommend to their consideration such measures as he shall judge necessary and expedient, it becomes my duty to now address your body with regard to the grave crisis that has arisen in the relations of the United States to Spain by reason of the warfare that for more than three years has raged in the neighboring island of Cuba. . . .

The present revolution is but the successor of other similar insurrections which have occurred in Cuba against the dominion of Spain, extending over a period of nearly half a century, each of which during its progress has subjected the United States to great effort and expense in enforcing its neutrality laws, caused enormous losses to American trade and commerce, caused irritation, annoyance, and disturbance among our citizens, and, by the exercise of cruel, barbarous, and uncivilized practices of warfare, shocked the sensibilities and offended the human sympathies of our people. . . .

Our trade has suffered, the capital invested by our citizens in Cuba has been largely lost, and the temper and forbearance of our people have been so sorely tried as to beget a perilous unrest among our own citizens, which has inevitably found its expression from time to time in the National Legislature, so that issues wholly external to our own body politic engross attention and stand in the way of that close devotion to domestic advancement that becomes a self-contained commonwealth whose primal maxim has been the avoidance of all foreign entanglements. All this must needs awaken, and has, indeed, aroused, the utmost concern on the part of this Government, as well during my predecessor's term as in my own.

In April 1896 the evils from which our country suffered through the Cuban War became so onerous that

my predecessor made an effort to bring about a peace through the mediation of this Government in any way that might tend to an honorable adjustment of the contest between Spain and her revolted colony, on the basis of some effective scheme of self-government for Cuba under the flag and sovereignty of Spain. It failed through the refusal of the Spanish government then in power to consider any form of mediation or, indeed, any plan of settlement which did not begin with the actual submission of the insurgents to the mother country, and then only on such terms as Spain herself might see fit to grant. The war continued unabated. The resistance of the insurgents was in no wise diminished. . . .

The overtures of this Government made through its new envoy, General Woodford, and looking to an immediate and effective amelioration of the condition of the island, although not accepted to the extent of admitted mediation in any shape, were met by assurances that home rule in an advanced phase would be forthwith offered to Cuba, without waiting for the war to end, and that more humane methods should thenceforth prevail in the conduct of hostilities. Coincidentally with these declarations the new government of Spain continued and completed the policy, already begun by its predecessor, of testifying friendly regard for this nation by releasing American citizens held under one charge or another connected with the insurrection, so that by the end of November not a single person entitled in any way to our national protection remained in a Spanish prison. . . .

The necessity for a change in the condition of the reconcentrados is recognized by the Spanish Government. Within a few days past the orders of General Weyler have been revoked. The reconcentrados, it is said, are to be permitted to return to their homes and aided to resume the self-supporting pursuits of peace. Public works have been ordered to give them employment, and a sum of \$600,000 has been appropriated for their relief.

The war in Cuba is of such a nature that, short of

subjugation or extermination, a final military victory for either side seems impracticable. The alternative lies in the physical exhaustion of the one or the other party, or perhaps of both—a condition which in effect ended the ten years' war by the truce of Zanjón. The prospect of such a protraction and conclusion of the present strife is a contingency hardly to be contemplated with equanimity by the civilized world, and least of all by the United States, affected and injured as we are, deeply and intimately, by its very existence.

Realizing this, it appeared to be my duty, in a spirit of true friendliness, no less to Spain than to the Cubans, who have so much to lose by the prolongation of the struggle, to seek to bring about an immediate termination of the war. To this end I submitted on the 27th ultimo, as a result of much representation and correspondence, through the United States minister at Madrid, propositions to the Spanish Government looking to an armistice until 1 October for the negotiation of peace with the good offices of the President.

In addition I asked the immediate revocation of the order of reconcentration, so as to permit the people to return to their farms and the needy to be relieved with provisions and supplies from the United States, co-operating with the Spanish authorities, so as to afford full relief.

The reply of the Spanish Cabinet was received on the night of the 31st ultimo. It offered, as the means to bring about peace in Cuba, to confide the preparation thereof to the insular parliament, inasmuch as the concurrence of that body would be necessary to reach a final result, it being, however, understood that the powers reserved by the constitution to the central Government are not lessened or diminished. As the Cuban parliament does not meet until the 4th of May next, the Spanish Government would not object for its part to accept at once a suspension of hostilities if asked for by the insurgents from the general in chief, to whom it would pertain in such case to determine the duration and conditions of the armistice. . . .

With this last overture in the direction of immediate peace, and its disappointing reception by Spain, the Executive is brought to the end of his effort.

In my annual message of December last I said:

Of the untried measures there remain only: recognition of the insurgents as belligerents; recognition of the independence of Cuba; neutral intervention to end the war by imposing a rational compromise between the contestants, and intervention in favor of one or the other party. I speak not of forcible annexation, for that can not be thought of. That, by our code of morality, would be criminal aggression.

Thereupon I reviewed these alternatives in the light of President Grant's measured words, uttered in 1875, when, after seven years of sanguinary, destructive, and cruel hostilities in Cuba, he reached the conclusion that the recognition of the independence of Cuba was impracticable and indefensible and that the recognition of belligerence was not warranted by the facts according to the tests of public law. I commented especially upon the latter aspect of the question, pointing out the inconveniences and positive dangers of a recognition of belligerence, which, while adding to the already onerous burdens of neutrality within our own jurisdiction, could not in any way extend our influence or effective offices in the territory of hostilities.

Nothing has since occurred to change my view in this regard, and I recognize as fully now as then that the issuance of a proclamation of neutrality, by which process the so-called recognition of belligerents is published, could of itself and unattended by other action accomplish nothing toward the one end for which we labor—the instant pacification of Cuba and the cessation of the misery that afflicts the island. . . .

There remain the alternative forms of intervention to end the war, either as an impartial neutral, by imposing a rational compromise between the contestants, or as the active ally of the one party or the other.

As to the first, it is not to be forgotten that during the last few months the relation of the United States has

virtually been one of friendly intervention in many ways, each not of itself conclusive, but all tending to the exertion of a potential influence toward an ultimate pacific result, just and honorable to all interests concerned. The spirit of all our acts hitherto has been an earnest, unselfish desire for peace and prosperity in Cuba, untarnished by differences between us and Spain and unstained by the blood of American citizens.

The forcible intervention of the United States as a neutral to stop the war, according to the large dictates of humanity and following many historical precedents where neighbouring States have interfered to check the hopeless sacrifices of life by internecine conflicts beyond their borders, is justifiable on rational grounds. It involves, however, hostile constraint upon both the parties to the contest, as well to enforce a truce as to guide the eventual settlement.

The grounds for such intervention may be briefly summarized as follows:

First. In the cause of humanity and to put an end to the barbarities, bloodshed, starvation, and horrible miseries now existing there, and which the parties to the conflict are either unable or unwilling to stop or mitigate. It is no answer to say this is all in another country, belonging to another nation, and is therefore none of our business. It is specially our duty, for it is right at our door.

Second. We owe it to our citizens in Cuba to afford them that protection and indemnity for life and property which no government there can or will afford, and to that end to terminate the conditions that deprive them of legal protection.

Third. The right to intervene may be justified by the very serious injury to the commerce, trade, and business of our people and by the wanton destruction of property and devastation of the island.

Fourth, and which is of the utmost importance. The present condition of affairs in Cuba is a constant menace to our peace and entails upon this Government an enormous expense. With such a conflict waged for years

in an island so near us and with which our people have such trade and business relations; when the lives and liberty of our citizens are in constant danger and their property destroyed and themselves ruined; where our trading vessels are liable to seizure and are seized at our very door by war ships of a foreign nation; the expeditions of filibustering that we are powerless to prevent altogether, and the irritating questions and entanglements thus arising—all these and others that I need not mention, with the resulting strained relations, are a constant menace to our peace and compel us to keep on a semi-war footing with a nation with which we are at peace.

These elements of danger and disorder already pointed out have been strikingly illustrated by a tragic event which has deeply and justly moved the American people. I have already transmitted to Congress the report of the naval court of inquiry on the destruction of the battleship *Maine* in the harbor of Havana during the night of the 15th of February. The destruction of that noble vessel has filled the national heart with inexpressible horror. Two hundred and fifty-eight brave sailors and marines and two officers of our Navy, reposing in the fancied security of a friendly harbor, have been hurled to death, grief and want brought to their homes, and sorrow to the nation.

The naval court of inquiry, which it is needless to say, commands the unqualified confidence of the Government, was unanimous in its conclusion that the destruction of the *Maine* was caused by an exterior explosion—that of a submarine mine. It did not assume to place the responsibility. That remains to be fixed.

In any event, the destruction of the *Maine*, by whatever exterior cause, is a patent and impressive proof of a state of things in Cuba that is intolerable. That condition is thus shown to be such that the Spanish Government can not assure safety and security to a vessel of the American Navy in the harbor of Havana on a mission of peace, and rightfully there. . . .

The long trial has proved that the object for which

Spain has waged the war cannot be attained. The fire of insurrection may flame or may smolder with varying seasons, but it has not been and it is plain that it cannot be extinguished by present methods. The only hope of relief and repose from a condition which can no longer be endured is the enforced pacification of Cuba. In the name of humanity, in the name of civilization, in behalf of endangered American interests which give us the right and the duty to speak and to act, the war in Cuba must stop.

In view of these facts and of these considerations I ask the Congress to authorize and empower the President to take measures to secure a full and final termination of hostilities between the Government of Spain and the people of Cuba, and to secure in the island the establishment of a stable government, capable of maintaining order and observing its international obligations, insuring peace and tranquillity and the security of its citizens as well as our own, and to use the military and naval forces of the United States as may be necessary for these purposes.

And in the interest of humanity and to aid in preserving the lives of the starving people of the island I recommend that the distribution of food and supplies be continued and that an appropriation be made out of the public Treasury to supplement the charity of our citizens.

The issue is now with the Congress. It is a solemn responsibility. I have exhausted every effort to relieve the intolerable condition of affairs which is at our doors. Prepared to execute every obligation imposed upon me by the Constitution and the law, I await your action.

Yesterday, and since the preparation of the foregoing message, official information was received by me that the latest decree of the Queen Regent of Spain directs General Blanco, in order to prepare and facilitate peace, to proclaim a suspension of hostilities, the duration and details of which have not yet been communicated to me.

This fact, with every other pertinent consideration, will, I am sure, have your just and careful attention in the solemn deliberations upon which you are about to

enter. If this measure attains a successful result, then our aspirations as a Christian, peace-loving people will be realized. If it fails, it will be only another justification for our contemplated action.

WILLIAM MCKINLEY.

## 50. THE ANNEXATION OF HAWAII, 1898

[Hawaii was discovered by Captain Cook in 1778. During the nineteenth century American influence became paramount in the Sandwich Islands, the group of which Hawaii is the most important, and in 1875 the United States guaranteed the independence of the island kingdom. In 1891 Queen Liliuokalani succeeded to the throne and began a policy of eliminating American influence. This led to a movement for its annexation, but Cleveland, on becoming President, withdrew the Treaty of Annexation from the Senate and in 1894 recognized the Republic of Hawaii.

The growing power of Japan added weight to the movement in favour of annexation, and during the war with Spain the island was used as a naval base. Opposition to the acquisition of the islands, which made it likely that more than a third of the Senate would reject any Treaty of Annexation, caused McKinley to carry out this end by means of a Joint Resolution which was passed on 7 July 1898. In 1900 the status of a Territory, with eligibility for statehood, was conferred on the Islands.]

### *Joint Resolution to provide for annexing the Hawaiian Islands to the United States*

Whereas the Government of the Republic of Hawaii having, in due form, signified its consent, in the manner provided by its constitution, to cede absolutely and without reserve to the United States of America all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands and their dependencies, and also to cede and transfer to the United States the absolute fee and ownership of all public, Government, or Crown lands, public

buildings or edifices, ports, harbors, military equipment, and all other public property of every kind and description belonging to the Government of the Hawaiian Islands, together with every right and appurtenance thereunto appertaining: Therefore,

*Resolved*, That said cession is accepted, ratified, and confirmed, and that the said Hawaiian Islands and their dependencies be, and they are hereby, annexed as a part of the territory of the United States and are subject to the sovereign dominion thereof, and that all and singular the property and rights hereinbefore mentioned are vested in the United States of America.

The existing laws of the United States relative to public lands shall not apply to such lands in the Hawaiian Islands; but the Congress of the United States shall enact special laws for their management and disposition: *Provided*, That all revenue from or proceeds of the same, except as regards such part thereof as may be used or occupied for the civil, military, or naval purposes of the United States, or may be assigned for the use of the local government, shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes.

Until Congress shall provide for the government of such islands, all the civil, judicial, and military powers exercised by the officers of the existing government in said islands shall be vested in such person or persons and shall be exercised in such manner as the President of the United States shall direct; and the President shall have power to remove said officers and fill the vacancies so occasioned.

The existing treaties of the Hawaiian Islands with foreign nations shall forthwith cease and determine, being replaced by such treaties as may exist, or as may be hereafter concluded, between the United States and such foreign nations. The municipal legislation of the Hawaiian Islands, not enacted for the fulfilment of the treaties so extinguished, and not inconsistent with this joint resolution nor contrary to the Constitution of the United States nor to any existing treaty of the United

States, shall remain in force until the Congress of the United States shall otherwise determine.

Until legislation shall be enacted extending the United States customs laws and regulations to the Hawaiian Islands the existing customs relations of the Hawaiian Islands with the United States and other countries shall remain unchanged.

The public debt of the Republic of Hawaii, lawfully existing at the date of the passage of this joint resolution, including the amounts due to depositors in the Hawaiian Postal Savings Bank, is hereby assumed by the Government of the United States; but the liability of the United States in this regard shall in no case exceed four million dollars. So long, however, as the existing Government and the present commercial relations of the Hawaiian Islands are continued as hereinbefore provided said Government shall continue to pay the interest on said debt.

There shall be no further immigration of Chinese into the Hawaiian Islands, except upon such conditions as are now or may hereafter be allowed by the laws of the United States; and no Chinese, by reason of anything herein contained, shall be allowed to enter the United States from the Hawaiian Islands.

The President shall appoint five commissioners, at least two of whom shall be residents of the Hawaiian Islands, who shall, as soon as reasonably practicable, recommend to Congress such legislation concerning the Hawaiian Islands as they shall deem necessary or proper. . . .

## 51. THE TREATY OF PARIS, 1898

[The United States easily defeated Spain in the war of 1898. The Spanish fleet in the West Indies was defeated in Santiago Bay on 3 July and the island of Cuba quickly conquered. On 1 May the Spanish Pacific fleet was destroyed in Manila Bay, and Manila itself was occupied on

13 August. A preliminary peace was accepted by Spain on 12 August, and negotiations for a final settlement began at Paris on 1 October, and the Treaty was signed on 10 December.

The acquisition of the Philippines was fiercely resisted by many in Congress, and the Treaty only secured ratification in the Senate with the necessary two-thirds majority by a very narrow margin on 6 February 1899.]

ART. I. Spain relinquishes all claim of sovereignty over and title to Cuba.

And as the island is, upon its evacuation by Spain, to be occupied by the United States, the United States will, so long as such occupation shall last, assume and discharge the obligations that may under international law result from the fact of its occupation, for the protection of life and property.

ART. II. Spain cedes to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and the island of Guam in the Marianas or Ladrones.

ART. III. Spain cedes to the United States the archipelago known as the Philippine Islands. . . .

The United States will pay to Spain the sum of twenty million dollars (\$20,000,000) within three months after the exchange of the ratifications of the present treaty.

ART. IV. The United States will, for the term of ten years from the date of the exchange of the ratifications of the present treaty, admit Spanish ships and merchandise to the ports of the Philippine Islands on the same terms as ships and merchandise of the United States. . . .

ART. VII. The United States and Spain mutually relinquish all claims for indemnity, national and individual, of every kind, of either Government, or of its citizens or subjects, against the other Government, that may have arisen since the beginning of the late insurrection in Cuba and prior to the exchange of ratifications of the present treaty, including all claims for indemnity for the cost of the war.

The United States will adjudicate and settle the

claims of its citizens against Spain relinquished in this article.

ART. X. The inhabitants of the territories over which Spain relinquishes or cedes her sovereignty shall be secured in the free exercise of their religion.

ART. XI. The Spaniards residing in the territories over which Spain by this treaty cedes or relinquishes her sovereignty shall be subject in matters civil as well as criminal to the jurisdiction of the courts of the country wherein they reside, pursuant to the ordinary laws governing the same; and they shall have the right to appear before such courts, and to pursue the same course as citizens of the country to which the courts belong. . . .

ART. XVI. It is understood that any obligations assumed in this treaty by the United States with respect to Cuba are limited to the time of its occupancy thereof; but it will, upon the termination of such occupancy, advise any government established in the island to assume the same obligations.

## 52. JOHN HAY'S CIRCULAR LETTER, 1899

[By the Treaty of Hwanghsia in 1844 China opened her ports to commerce with the United States and during the next fifty years there was a great increase in American trade with this country. In 1895 a new era opened in Chinese relations with foreign Powers when, following her defeat by Japan, she was forced to cede the Liaotung Peninsula. Russia prevented that cession, but in 1898 Russia acquired the lease of Port Arthur, Germany of Kiao-chao, Great Britain of Wei-hai-wei, and France of Kwangchouwan. At the same time the Powers began to claim large 'spheres of influence' in China, particularly Germany in the Shantung Peninsula, Russia in Manchuria, and Great Britain in the Yangtse Valley. The United States, which claimed no such sphere, was naturally alarmed, and on 6 September 1899

John Hay, the Secretary of State, sent a Circular Letter to the Powers suggesting that they should agree to a policy towards China which came to be known as the 'Open Door.' The British Government sent a favourable reply; the other Powers acquiesced with various reservations, that of Russia being particularly evasive. Hay, however, announced in another Circular Note of 20 March 1900 that he had secured general acceptance.]

*Mr Hay to Mr White*

DEPARTMENT OF STATE,  
WASHINGTON, 6 September 1899.

SIR: At the time when the Government of the United States was informed by that of Germany that it had leased from His Majesty the Emperor of China the port of Kiao-chao and the adjacent territory in the province of Shantung, assurances were given to the ambassador of the United States at Berlin by the Imperial German minister for foreign affairs that the rights and privileges insured by treaties with China to citizens of the United States would not thereby suffer or be in anywise impaired within the area over which Germany had thus obtained control.

More recently, however, the British Government recognized by a formal agreement with Germany the exclusive right of the latter country to enjoy in said leased area and the contiguous 'sphere of influence or interest' certain privileges, more especially those relating to railroads and mining enterprises; but, as the exact nature and extent of the rights thus recognized have not been clearly defined, it is possible that serious conflicts of interest may at any time arise, not only between British and German subjects within said area, but that the interests of our citizens may also be jeopardized thereby.

Earnestly desirous to remove any cause of irritation and to insure at the same time to the commerce of all nations in China the undoubted benefits which should accrue from a formal recognition by the various Powers claiming 'spheres of interest' that they shall enjoy

perfect equality of treatment for their commerce and navigation within such 'spheres,' the Government of the United States would be pleased to see His German Majesty's Government give formal assurances and lend its co-operation in securing like assurances from the other interested Powers that each within its respective sphere of whatever influence—

First. Will in no way interfere with any treaty port or any vested interest within any so-called 'sphere of interest' or leased territory it may have in China.

Second. That the Chinese treaty tariff of the time being shall apply to all merchandise landed or shipped to all such ports as are within said 'sphere of interest' (unless they be 'free ports'), no matter to what nationality it may belong, and that duties so leviable shall be collected by the Chinese Government.

Third. That it will levy no higher harbor dues on vessels of another nationality frequenting any port in such 'sphere' than shall be levied on vessels of its own nationality, and no higher railroad charges over lines built, controlled, or operated within its 'sphere' on merchandise belonging to citizens or subjects of other nationalities transported through such 'sphere' than shall be levied on similar merchandise belonging to its own nationals transported over equal distances.

The liberal policy pursued by His Imperial German Majesty in declaring Kiao-chao a free port and in aiding the Chinese Government in the establishment there of a custom-house are so clearly in line with the proposition which this Government is anxious to see recognized that it entertains the strongest hope that Germany will give its acceptance and hearty support.

The recent ukase of His Majesty the Emperor of Russia declaring the port of Ta-lien-wan open during the whole of the lease under which it is held from China, to the merchant ships of all nations, coupled with the categorical assurances made to this Government by His Imperial Majesty's representative at this capital at the time, and since repeated to me by the present Russian ambassador, seem to insure the support of the

Emperor to the proposed measure. Our ambassador at the Court of St Petersburg has, in consequence, been instructed to submit it to the Russian Government and to request their early consideration of it. A copy of my instruction on the subject to Mr Tower is herewith inclosed for your confidential information.

The commercial interests of Great Britain and Japan will be so clearly served by the desired declaration of intentions, and the views of the Governments of these countries as to the desirability of the adoption of measures insuring the benefits of equality of treatment of all foreign trade throughout China are so similar to those entertained by the United States, that their acceptance of the propositions herein outlined and their co-operation in advocating their adoption by the other Powers can be confidently expected. I enclose herewith copy of the instruction which I have sent to Mr Choate on the subject.

In view of the present favorable conditions, you are instructed to submit the above considerations to His Imperial German Majesty's minister for foreign affairs, and to request his early consideration of the subject.

Copy of this instruction is sent to our ambassadors at London and at St Petersburg for their information.

I have, etc.,

JOHN HAY.

### 53. PRESIDENT THEODORE ROOSEVELT'S FIRST ANNUAL MESSAGE, 1901

[President McKinley was re-elected in November 1900 by a considerable majority. The Republican candidate for the Vice-Presidency was Theodore Roosevelt, Governor of New York, a leader of the progressive wing of the party. In September 1901 McKinley was assassinated by an anarchist, and Roosevelt succeeded to the Presidency.

In his first Annual Message of 3 December 1901 Roosevelt proclaimed his intention of dealing with the problem of the trusts. His message, however, depicted well the dilemma in which the average American found himself, divided between an intense admiration for the men who had created the prosperity of Big Business in the United States and a detestation of the power they wielded.]

*To the Senate and House of Representatives:*

. . . During the last five years business confidence has been restored, and the nation is to be congratulated because of its present abounding prosperity. Such prosperity can never be created by law alone, although it is easy enough to destroy it by mischievous laws. If the hand of the Lord is heavy upon any country, if flood or drought comes, human wisdom is powerless to avert the calamity. Moreover, no law can guard us against the consequences of our own folly. The men who are idle or credulous, the men who seek gains not by genuine work with head or hand but by gambling in any form, are always a source of menace not only to themselves but to others. If the business world loses its head, it loses what legislation cannot supply. Fundamentally the welfare of each citizen, and therefore the welfare of the aggregate of citizens which makes the nation, must rest upon individual thrift and energy, resolution and intelligence. Nothing can take the place of this individual capacity; but wise legislation and honest and intelligent administration can give it the fullest scope, the largest opportunity to work to good effect.

The tremendous and highly complex industrial development which went on with ever-accelerated rapidity during the latter half of the nineteenth century brings us face to face, at the beginning of the twentieth, with very serious social problems. The old laws, and the old customs which had almost the binding force of law, were once quite sufficient to regulate the accumulation and distribution of wealth. Since the industrial changes which have so enormously increased the

productive power of mankind, they are no longer sufficient.

The growth of cities has gone on beyond comparison faster than the growth of the country, and the upbuilding of the great industrial centres has meant a startling increase, not merely in the aggregate of wealth, but in the number of very large individual, and especially of very large corporate, fortunes. The creation of these great corporate fortunes has not been due to the tariff nor to any other governmental action, but to natural causes in the business world, operating in other countries as they operate in our own.

The process has aroused much antagonism, a great part of which is wholly without warrant. It is not true that as the rich have grown richer the poor have grown poorer. On the contrary, never before has the average man, the wage-worker, the farmer, the small trader, been so well off as in this country and at the present time. There have been abuses connected with the accumulation of wealth; yet it remains true that a fortune accumulated in legitimate business can be accumulated by the person specially benefited only on condition of conferring immense incidental benefits upon others. Successful enterprise, of the type which benefits all mankind, can only exist if the conditions are such as to offer great prizes as the rewards of success. The captains of industry who have driven the railway systems across this continent, who have built up our commerce, who have developed our manufactures, have on the whole done great good to our people. Without them the material development of which we are so justly proud could never have taken place. Moreover, we should recognize the immense importance of this material development by leaving as unhampered as is compatible with the public good the strong and forceful men upon whom the success of business operations inevitably rests. The slightest study of business conditions will satisfy any one capable of forming a judgment that the personal equation is the most important factor in a business operation; that the business

ability of the man at the head of any business concern, big or little, is usually the factor which fixes the gulf between striking success and hopeless failure.

An additional reason for caution in dealing with corporations is to be found in the international commercial conditions of to-day. The same business conditions which have produced the great aggregations of corporate and individual wealth have made them very potent factors in international commercial competition. Business concerns which have the largest means at their disposal and are managed by the ablest men are naturally those which take the lead in the strife for commercial supremacy among the nations of the world. America has only just begun to assume that commanding position in the international business world which we believe will more and more be hers. It is of the utmost importance that this position be not jeopardized, especially at a time when the overflowing abundance of our own natural resources and the skill, business energy, and mechanical aptitude of our people make foreign markets essential. Under such conditions it would be most unwise to cramp or to fetter the youthful strength of our nation.

Moreover, it cannot too often be pointed out that to strike with ignorant violence at the interests of one set of men almost inevitably endangers the interests of all. The fundamental rule in our national life—the rule which underlies all others—is that, on the whole, and in the long run, we shall go up or down together. . . .

The mechanism of modern business is so delicate that extreme care must be taken not to interfere with it in a spirit of rashness or ignorance. Many of those who have made it their vocation to denounce the great industrial combinations, which are popularly, although with technical inaccuracy, known as 'trusts,' appeal especially to hatred and fear. These are precisely the two emotions, particularly when combined with ignorance, which unfit men for the exercise of cool and steady judgment. In facing new industrial conditions, the whole history of the world shows that legislation

will generally be both unwise and ineffective unless undertaken after calm inquiry and with sober self-restraint.

Much of the legislation directed at the trusts would have been exceedingly mischievous had it not also been entirely ineffective. In accordance with a well-known sociological law, the ignorant or reckless agitator has been the really effective friend of the evils which he has been nominally opposing. In dealing with business interests, for the Government to undertake by crude and ill-considered legislation to do what may turn out to be bad, would be to incur the risk of such far-reaching national disaster that it would be preferable to undertake nothing at all. The men who demand the impossible or undesirable serve as the allies of the forces with which they are nominally at war, for they hamper those who would endeavor to find out in rational fashion what the wrongs really are and to what extent and in what manner it is practicable to apply remedies.

All this is true; and yet it is also true that there are real and grave evils, one of the chief being over-capitalization because of its many baleful consequences; and a resolute and practical effort must be made to correct these evils.

There is a widespread conviction in the minds of the American people that the great corporations known as trusts are in certain of their features and tendencies hurtful to the general welfare. This . . . is based upon sincere conviction that combination and concentration should be, not prohibited, but supervised and within reasonable limits controlled; and in my judgment this conviction is right.

It is no limitation upon property rights or freedom of contract to require that when men receive from government the privilege of doing business under corporate form, which frees them from individual responsibility, and enables them to call into their enterprises the capital of the public, they shall do so upon absolutely truthful representations as to the value of the property in which the capital is to be invested.

Corporations engaged in interstate commerce should be regulated if they are found to exercise a license working to the public injury. It should be as much the aim of those who seek for social betterment to rid the business world of crimes of cunning as to rid the entire body politic of crimes of violence. Great corporations exist only because they are created and safeguarded by our institutions; and it is therefore our right and our duty to see that they work in harmony with these institutions.

The first essential in determining how to deal with the great industrial combinations is knowledge of the facts—publicity. In the interest of the public, the Government should have the right to inspect and examine the workings of the great corporations engaged in interstate business. Publicity is the only sure remedy which we can now invoke. What further remedies are needed in the way of governmental regulation, or taxation, can only be determined after publicity has been obtained, by process of law, and in the course of administration. The first requisite is knowledge, full and complete—knowledge which may be made public to the world. . . .

The large corporations, commonly called trusts, though organized in one State, always do business in many States, often doing very little business in the State where they are incorporated. There is utter lack of uniformity in the State laws about them; and as no State has any exclusive interest in or power over their acts, it has in practice proved impossible to get adequate regulation through State action. Therefore, in the interest of the whole people, the nation should, without interfering with the power of the States in the matter itself, also assume power of supervision and regulation over all corporations doing an interstate business. This is especially true where the corporation derives a portion of its wealth from the existence of some monopolistic element or tendency in its business. There would be no hardship in such supervision; banks are subject to it, and in their case it is now accepted as a simple matter of course.

Indeed, it is now probable that supervision of corporations by the national government need not go so far as is now the case with the supervision exercised over them by so conservative a State as Massachusetts, in order to produce excellent results.

When the Constitution was adopted, at the end of the eighteenth century, no human wisdom could foretell the sweeping changes, alike in industrial and political conditions, which were to take place by the beginning of the twentieth century. At that time it was accepted as a matter of course that the several States were the proper authorities to regulate, so far as was then necessary, the comparatively insignificant and strictly localized corporate bodies of the day. The conditions are now wholly different, and wholly different action is called for. I believe that a law can be framed which will enable the national government to exercise control along the lines above indicated; profiting by the experience gained through the passage and administration of the Interstate Commerce Act. If, however, the judgment of the Congress is that it lacks the constitutional power to pass such an Act, then a constitutional amendment should be submitted to confer the power.

The most vital problem with which this country, and for that matter the whole civilized world, has to deal is the problem which has for one side the betterment of social conditions, moral and physical, in large cities, and for another side the effort to deal with that tangle of far-reaching questions which we group together when we speak of 'labor.' The chief factor in the success of each man—wage-worker, farmer, and capitalist alike—must ever be the sum-total of his own individual qualities and abilities. Second only to this comes the power of acting in combination or association with others. Very great good has been and will be accomplished by associations or unions of wage-workers when managed with forethought, and when they combine insistence upon their own rights with law-abiding respect for the rights of others. The display

of these qualities in such bodies is a duty to the nation no less than to the associations themselves. Finally, there must also in many cases be action by the Government in order to safeguard the rights and interests of all. Under the Constitution there is much more scope for such action by the State and the municipality than by the nation. But on points such as those touched on above, the national government can act.

When all is said and done, the rule of brotherhood remains as the indispensable prerequisite to success in the kind of national life for which we strive. Each man must work for himself, and unless he so works no outside help can avail him; but each man must remember also that he is indeed his brother's keeper, and that while no man who refuses to walk can be carried with advantage to himself or to anyone else, yet that each at times stumbles or halts, that each at times needs to have the helping hand outstretched to him. To be permanently effective, aid must always take the form of helping a man to help himself; and we can all best help ourselves by joining together in the work that is of common interest to all.

#### 54. PRESIDENT THEODORE ROOSEVELT AND THE MONROE DOCTRINE, 1901-1905

[Theodore Roosevelt was a vigorous upholder of American Imperialism and won fame as commander of the Rough Riders in Cuba. Soon after he succeeded to the Presidency he had advocated a policy of expansion in a speech at the State Fair of Minnesota, and had linked up the project for the Isthmian Canal with the Monroe Doctrine. In 1902 a crisis developed over Venezuela, when Great Britain, Germany, and Italy had threatened to blockade the country to force her to pay her international debts. This question was settled amicably, but it showed that the use of force to collect

debts might prove a threat to the principles of the Monroe Doctrine.

In his Annual Message to Congress on 6 December 1904 Roosevelt recognized this danger and declared that it could only be avoided if the United States was prepared to intervene in cases of 'chronic wrongdoing or impotence' in a Latin-American State, which entailed the readiness on her part to exercise 'an international police power.' In 1905 the Republic of San Domingo was threatened with foreclosure by her European creditors, and Roosevelt hastened to announce that the United States would not allow European nations to use force to collect their debts in the American continent. To prevent this a United States receiver-general was placed in charge of the revenue of San Domingo. In his Annual Message of 5 December 1905 Roosevelt explained more fully the reasons for this action.]

(a) *President Theodore Roosevelt's Speech at the State Fair of Minnesota, 2 September 1901*

. . . Yet, while this is our first duty, it is not our whole duty. Exactly as each man, while doing first his duty to his wife and the children within his home, must yet, if he hopes to amount to much, strive mightily in the world outside his home, so our nation, while first of all seeing to its own domestic well-being, must not shrink from playing its part among the great nations without.

Our duty may take many forms in the future, as it has taken many forms in the past. Nor is it possible to lay down a hard-and-fast rule for all cases. We must ever face the fact of our shifting national needs, of the always changing opportunities that present themselves. But we may be certain of one thing: whether we wish it or not, we cannot avoid hereafter having duties to do in the face of other nations. All that we can do is to settle whether we shall perform these duties well or ill.

Right here let me make as vigorous a plea as I know how in favor of saying nothing that we do not mean, and of acting without hesitation up to whatever we say. A good many of you are probably acquainted with the old proverb, 'Speak softly and carry a big stick—you will go far.' If a man continually blusters, if he lacks civility, a

big stick will not save him from trouble; and neither will speaking softly avail, if back of the softness there does not lie strength, power. In private life there are few beings more obnoxious than the man who is always loudly boasting; and if the boaster is not prepared to back up his words, his position becomes absolutely contemptible. So it is with the nation. It is both foolish and undignified to indulge in undue self-glorification, and, above all, in loose-tongued denunciation of other peoples. Whenever on any point we come in contact with a foreign Power, I hope that we shall always strive to speak courteously and respectfully of that foreign Power. Let us make it evident that we intend to do justice. Then let us make it equally evident that we will not tolerate injustice being done us in return. Let us further make it evident that we use no words which we are not prepared to back up with deeds, and that, while our speech is always moderate, we are ready and willing to make it good. Such an attitude will be the surest possible guaranty of that self-respecting peace the attainment of which is and must ever be the prime aim of a self-governing people.

This is the attitude we should take as regards the Monroe Doctrine. There is not the least need of blustering about it. Still less should it be used as a pretext for our own aggrandizement at the expense of any other American State. But, most emphatically, we must make it evident that we intend on this point ever to maintain the old American position. Indeed, it is hard to understand how any man can take any other position now that we are all looking forward to the building of the Isthmian Canal. The Monroe Doctrine is not international law, but there is no necessity that it should be.

All that is needful is that it should continue to be a cardinal feature of American policy on this continent; and the Spanish-American States should, in their own interests, champion it as strongly as we do. We do not by this doctrine intend to sanction any policy of aggression by one American commonwealth at the

expense of any other, nor any policy of commercial discrimination against any foreign Power whatsoever. Commercially, as far as this doctrine is concerned, all we wish is a fair field and no favor; but if we are wise we shall strenuously insist that under no pretext whatsoever shall there be any territorial aggrandizement on American soil by any European Power, and this no matter what form the territorial aggrandizement may take.

We most earnestly hope and believe that the chance of our having any hostile military complication with any foreign Power is very small. But that there will come a strain, a jar here and there, from commercial and agricultural—that is, from industrial—competition, is almost inevitable. Here again we have got to remember that our first duty is to our own people; and yet that we can best get justice by doing justice. We must continue the policy that has been so brilliantly successful in the past, and so shape our economic system as to give every advantage to the skill, energy, and intelligence of our farmers, merchants, manufacturers, and wage-workers; and yet we must also remember, in dealing with other nations, that benefits must be given where benefits are sought. It is not possible to dogmatize as to the exact way of attaining this end, for the exact conditions cannot be foretold. In the long run, one of our prime needs is stability and continuity of economic policy; and yet, through treaty or by direct legislation, it may, at least in certain cases, become advantageous to supplement our present policy by a system of reciprocal benefit and obligation.

Throughout a large part of our national career our history has been one of expansion, the expansion being of different kinds at different times. This explanation is not a matter of regret, but of pride. It is vain to tell a people as masterful as ours that the spirit of enterprise is not safe. The true American has never feared to run risks when the prize to be won was of sufficient value. No nation capable of self-government, and of developing by its own efforts a sane and orderly civilization, no

matter how small it may be, has anything to fear from us. . . .

(b) *Roosevelt's Annual Message, 6 December 1904*

. . . It is not true that the United States feels any land hunger or entertains any projects as regards the other nations of the Western Hemisphere save such as are for their welfare. All that this country desires is to see the neighboring countries stable, orderly, and prosperous. Any country whose people conduct themselves well can count upon our hearty friendship. If a nation shows that it knows how to act with reasonable efficiency and decency in social and political matters, if it keeps order and pays its obligations, it need fear no interference from the United States. Chronic wrongdoing, or an impotence which results in a general loosening of the ties of civilized society, may in America, as elsewhere, ultimately require intervention by some civilized nation, and in the Western Hemisphere the adherence of the United States to the Monroe Doctrine may force the United States, however reluctantly, in flagrant cases of such wrongdoing or impotence, to the exercise of an international police power. If every country washed by the Caribbean Sea would show the progress in stable and just civilization which with the aid of the Platt Amendment Cuba has shown since our troops left the island, and which so many of the republics in both Americas are constantly and brilliantly showing, all question of interference by this nation with their affairs would be at an end. Our interests and those of our southern neighbors are in reality identical. They have great natural riches, and if within their borders the reign of law and justice obtains, prosperity is sure to come to them. While they thus obey the primary laws of civilized society they may rest assured that they will be treated by us in a spirit of cordial and helpful sympathy. We would interfere with them only in the last resort, and then only if it became evident that their inability or unwillingness to do justice at home and abroad had

violated the rights of the United States or had invited foreign aggression to the detriment of the entire body of American nations. It is a mere truism to say that every nation, whether in America or anywhere else, which desires to maintain its freedom, its independence, must ultimately realize that the right of such independence cannot be separated from the responsibility of making good use of it.

In asserting the Monroe Doctrine, in taking such steps as we have taken in regard to Cuba, Venezuela, and Panama, and in endeavoring to circumscribe the theater of war in the Far East, and to secure the open door in China, we have acted in our own interest as well as in the interest of humanity at large. There are, however, cases in which, while our own interests are not greatly involved, strong appeal is made to our sympathies. Ordinarily it is very much wiser and more useful for us to concern ourselves with striving for our own moral and material betterment here at home than to concern ourselves with trying to better the condition of things in other nations. We have plenty of sins of our own to war against, and under ordinary circumstances we can do more for the general uplifting of humanity by striving with heart and soul to put a stop to civic corruption, to brutal lawlessness and violent race prejudices here at home than by passing resolutions about wrongdoing elsewhere. Nevertheless there are occasional crimes committed on so vast a scale and of such peculiar horror as to make us doubt whether it is not our manifest duty to endeavor at least to show our disapproval of the deed and our sympathy with those who have suffered by it. The cases must be extreme in which such a course is justifiable. There must be no effort made to remove the mote from our brother's eye if we refuse to remove the beam from our own. But in extreme cases action may be justifiable and proper. What form the action shall take must depend upon the circumstances of the case; that is, upon the degree of the atrocity and upon our power to remedy it. The cases in which we could interfere by force of arms as we interferred to put a stop

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to intolerable conditions in Cuba are necessarily very few. . . .

(c) *Roosevelt's Annual Message, 5 December 1905*

. . . It must be understood that under no circumstances will the United States use the Monroe Doctrine as a cloak for territorial aggression. We desire peace with all the world, but perhaps most of all with the other peoples of the American Continent. There are, of course, limits to the wrongs which any self-respecting nation can endure. It is always possible that wrong actions toward this nation, or toward citizens of this nation, in some State unable to keep order among its own people, unable to secure justice from outsiders, and unwilling to do justice to those outsiders who treat it well, may result in our having to take action to protect our rights; but such action will not be taken with a view to territorial aggression, and it will be taken at all only with extreme reluctance and when it has become evident that every other resource has been exhausted.

Moreover, we must make it evident that we do not intend to permit the Monroe Doctrine to be used by any nation on this Continent as a shield to protect it from the consequences of its own misdeeds against foreign nations. If a republic to the south of us commits a tort against a foreign nation, such as an outrage against a citizen of that nation, then the Monroe Doctrine does not force us to interfere to prevent punishment of the tort, save to see that the punishment does not assume the form of territorial occupation in any shape. The case is more difficult when it refers to a contractual obligation. Our own Government has always refused to enforce such contractual obligations on behalf of its citizens by an appeal to arms. It is much to be wished that all foreign governments would take the same view. But they do not; and in consequence we are liable at any time to be brought face to face with disagreeable alternatives. On the one hand, this country would certainly decline to go

to war to prevent a foreign government from collecting a just debt; on the other hand, it is very inadvisable to permit any foreign Power to take possession, even temporarily, of the custom houses of an American Republic in order to enforce the payment of its obligations; for such temporary occupation might turn into a permanent occupation. The only escape from these alternatives may at any time be that we must ourselves undertake to bring about some arrangement by which so much as possible of a just obligation shall be paid. It is far better that this country should put through such an arrangement, rather than allow any foreign country to undertake it. To do so insures the defaulting republic from having to pay debt of an improper character under duress, while it also insures honest creditors of the republic from being passed by in the interest of dishonest or grasping creditors. Moreover, for the United States to take such a position offers the only possible way of insuring us against a clash with some foreign Power. The position is, therefore, in the interest of peace as well as in the interest of justice. It is of benefit to our people; it is of benefit to foreign peoples; and most of all it is really of benefit to the people of the country concerned. . . .

## 55. THE CONSTITUTION OF OREGON: INITIATIVE AND REFERENDUM, 1902

[The principles of the Initiative and the Referendum were first introduced into a State Constitution by South Dakota in 1898. The Initiative is a system by which any citizen or group of citizens may draft a Bill and, after the backing of a certain number of voters has been obtained, force its submission to the voters for approval or rejection. The Referendum is a plan by which a number of voters may force the submission to the people of a Bill which has been passed by

the legislature. There are considerable varieties of practice in the different States. Nineteen States have adopted both systems, and two the Referendum only.

The Oregon plan for Initiative and Referendum was established by a constitutional amendment on 2 June 1902. It allows for any constitutional or statutory measure to be initiated by a petition signed by eight per cent. of the voters. The proposal is then submitted to the people and, if it obtains a majority of the electors voting, it becomes law. Any Act passed by the legislature, with certain exceptions, must be referred to the people if five per cent. of the voters demand a referendum. The supporters and opponents of any measure may prepare arguments, which are printed in the pamphlet containing the text of the measures to be referred to the people, and a copy of the pamphlet is sent to each voter.]

#### ARTICLE IV—LEGISLATIVE DEPARTMENT

§ 1. *Legislative Authority—Style of Bill—Initiative and Referendum.*—The legislative authority of the State shall be vested in a legislative assembly, consisting of a senate and house of representatives, but the people reserve to themselves power to propose laws and amendments to the constitution and to enact or reject the same at the polls, independent of the legislative assembly, and also reserve power at their own option to approve or reject at the polls any act of the legislative assembly. The first power reserved by the people is the initiative, and not more than eight per cent. of the legal voters shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the Secretary of State not less than four months before the election at which they are to be voted upon. The second power is the referendum, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health, or safety) either by the petition signed by five per cent. of the legal voters, or by the legislative assembly, as other Bills are enacted. Referendum petitions shall be filed with the Secretary of State not more than ninety days after the final adjournment of the session

of the legislative assembly which passed the Bill on which the referendum is demanded. The veto power of the governor shall not extend to measures referred to the people. All elections on measures referred to the people of the State shall be had at the biennial regular general elections, except when the legislative assembly shall order a special election. Any measure referred to the people shall take effect and become the law when it is approved by a majority of the votes cast thereon, and not otherwise. The style of all Bills shall be: 'Be it enacted by the people of the State of Oregon.' This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure. The whole number of votes cast for Justice of the Supreme Court at the regular election last preceding the filing of any petition for the initiative or for the referendum shall be the basis on which the number of legal voters necessary to sign such petition shall be counted. Petitions and orders for the initiative and for the referendum shall be filed with the Secretary of State, and in submitting the same to the people he, and all other officers, shall be guided by the general laws and the Act submitting this amendment, until legislation shall be especially provided therefor.

## 56. THE LOTTERY CASE (CHAMPION *v. AMES*), 1903

[Congress in 1895 had passed an Act making it a criminal offence to send lottery tickets through the mails. This case raised the question whether this was a valid exercise of the power granted to Congress under the commerce clause of the Constitution (Article I. Section 9). Up to this date Congress had confined the exercise of its powers under this clause to the subjects of intoxicating liquor, common carriers, and trusts (see the Interstate Commerce Act and the Sherman

Anti-Trust Act, Nos. 39 and 41). This extension of the so-called 'police power' made it possible for Congress to regulate the manufacture, sale, and transport of a number of articles by means of legislation professing to regulate commerce between the States. The most important of these Acts was the Pure Food and Drugs Act of 1906. But, when Congress attempted to prohibit child labour in 1916 by refusing to allow the transport of articles manufactured by children under the age of fourteen, the Supreme Court in the case of *Hammer v. Dagenhard et al.* (1918) declared that the Act went beyond the powers granted by the clause.]

HARLAN, J. . . . The questions presented by these opposing contentions are of great moment, and are entitled to receive, as they have received, the most careful consideration.

What is the import of the word 'commerce' as used in the Constitution? It is not defined by that instrument. Undoubtedly, the carrying from one State to another by independent carriers of things or commodities that are ordinary subjects of traffic, and which have in themselves a recognized value in money, constitutes interstate commerce. But does not commerce among the several States include something more? Does not the carrying from one State to another, by independent carriers, of lottery tickets that entitle the holder to the payment of a certain amount of money therein specified also constitute commerce among the States?

We come then to inquire whether there is any solid foundation upon which to rest the contention that Congress may not regulate the carrying of lottery tickets from one State to another, at least by corporations or companies whose business it is, for hire, to carry tangible property from one State to another. . . .

We are of opinion that lottery tickets are subjects of traffic and therefore are subjects of commerce, and the regulation of the carriage of such tickets from State to State, at least by independent carriers, is a regulation of commerce among the several States.

But it is said that the statute in question does not regulate the carrying of lottery tickets from State to

State, but by punishing those who cause them to be so carried Congress in effect prohibits such carrying; that in respect of the carrying from one State to another of articles or things that are, in fact, or according to usage in business, the subjects of commerce, the authority given Congress was not to *prohibit*, but only to *regulate*. This view was earnestly pressed at the bar by learned counsel, and must be examined.

It is to be remarked that the Constitution does not define what is to be deemed a legitimate regulation of interstate commerce. In *Gibbons v. Ogden* it was said that the power to regulate such commerce is the power to prescribe the rule by which it is to be governed. But this general observation leaves it to be determined, when the question comes before the court, whether Congress in prescribing a particular rule has exceeded its power under the Constitution. . . .

We have said that the carrying from State to State of lottery tickets constitutes interstate commerce, and that the regulation of such commerce is within the power of Congress under the Constitution. Are we prepared to say that a provision which is, in effect, a *prohibition* of the carriage of such articles from State to State is not a fit or appropriate mode for the *regulation* of that particular kind of commerce? If lottery traffic, *carried on through interstate commerce*, is a matter of which Congress may take cognizance and over which its power may be exerted, can it be possible that it must tolerate the traffic, and simply regulate the manner in which it may be carried on? Or may not Congress, for the protection of the people of all the States, and under the power to regulate interstate commerce, devise such means, within the scope of the Constitution, and not prohibited by it, as will drive that traffic out of commerce among the States?

In determining whether regulation may not under some circumstances properly take the form or have the effect of prohibition, the nature of the interstate traffic which it was sought by the Act of 2 May 1895 to suppress cannot be overlooked. . . .

If a State, when considering legislation for the suppression of lotteries within its own limits, may properly take into view the evils that inhere in the raising of money in that mode, why may not Congress, invested with the power to regulate commerce among the several States, provide that such commerce shall not be polluted by the carrying of lottery tickets from one State to another? In this connection it must not be forgotten that the power of Congress to regulate commerce among the States is plenary, is complete in itself, and is subject to no limitations except such as may be found in the Constitution. What provision in that instrument can be regarded as limiting the exercise of the power granted? What clause can be cited which, in any degree, countenances the suggestion that one may, of right, carry or cause to be carried from one State to another that which will harm the public morals? We cannot think of any clause of that instrument that could possibly be invoked by those who assert their right to send lottery tickets from State to State except the one providing that no person shall be deprived of his liberty without due process of law. . . . But surely it will not be said to be a part of anyone's liberty, as recognized by the supreme law of the land, that he shall be allowed to introduce into commerce among the States an element that will be confessedly injurious to the public morals.

If it be said that the Act of 1895 is inconsistent with the Tenth Amendment, reserving to the States respectively, or to the people, the powers not delegated to the United States, the answer is that the power to regulate commerce among the States has been expressly delegated to Congress.

Besides, Congress, by that Act, does not assume to interfere with traffic or commerce in lottery tickets carried on exclusively within the limits of any State, but has in view only commerce of that kind among the several States. It has not assumed to interfere with the completely internal affairs of any State, and has only legislated in respect of a matter which concern-

the people of the United States. As a State may, for the purpose of guarding the morals of its own people, forbid all sales of lottery tickets within its limits, so Congress, for the purpose of guarding the people of the United States against the 'wide-spread pestilence of lotteries' and to protect the commerce which concerns all the States, may prohibit the carrying of lottery tickets from one State to another. In legislating upon the subject of the traffic in lottery tickets, as carried on through interstate commerce, Congress only supplemented the action of those States—perhaps all of them—which, for the protection of the public morals, prohibit the drawing of lotteries, as well as the sale or circulation of lottery tickets, within their respective limits. It said, in effect, that it would not permit the declared policy of the States, which sought to protect their people against the mischiefs of the lottery business, to be overthrown or disregarded by the agency of interstate commerce. We should hesitate long before adjudging that an evil of such appalling character, carried on through interstate commerce, cannot be met and crushed by the only power competent to that end. We say competent to that end, because Congress alone has the power to occupy, by legislation, the whole field of interstate commerce. . . . If the carrying of lottery tickets from one State to another be interstate commerce, and if Congress is of opinion that an effective regulation for the suppression of lotteries, carried on through such commerce, is to make it a criminal offense to cause lottery tickets to be carried from one State to another, we know of no authority in the Courts to hold that the means thus devised are not appropriate and necessary to protect the country at large against a species of interstate commerce which, although in general use and somewhat favored in both national and State legislation in the early history of the country, has grown into disrepute, and has become offensive to the entire people of the nation. It is a kind of traffic which no one can be entitled to pursue as of right. . . .

It is said, however, that if, in order to suppress

lotteries carried on through interstate commerce, Congress may exclude lottery tickets from such commerce, that principle leads necessarily to the conclusion that Congress may arbitrarily exclude from commerce among the States any article, commodity, or thing, of whatever kind or nature, or however useful or valuable, which it may choose, no matter with what motive, to declare shall not be carried from one State to another. It will be time enough to consider the constitutionality of such legislation when we must do so. The present case does not require the court to declare the full extent of the power that Congress may exercise in the regulation of commerce among the States. We may, however, repeat, in this connection, what the court has heretofore said, that the power of Congress to regulate commerce among the States, although plenary, cannot be deemed arbitrary, since it is subject to such limitations or restrictions as are prescribed by the Constitution. This power, therefore, may not be exercised so as to infringe rights secured or protected by that instrument. It would not be difficult to imagine legislation that would be justly liable to such an objection as that stated, and be hostile to the objects for the accomplishment of which Congress was invested with the general power to regulate commerce among the several States. But, as often said, the possible abuse of a power is not an argument against its existence. There is probably no governmental power that may not be exerted to the injury of the public. . . .

The whole subject is too important, and the questions suggested by its consideration are too difficult of solution, to justify any attempt to lay down a rule for determining in advance the validity of every statute that may be enacted under the commerce clause. We decide nothing more in the present case than that lottery tickets are subjects of traffic among those who choose to sell or buy them; that the carriage of such tickets by independent carriers from one State to another is therefore interstate commerce; that under its power to regulate commerce among the several States Congress

—subject to the limitations imposed by the Constitution upon the exercise of the powers granted—has plenary authority over such commerce, and may prohibit the carriage of such tickets from State to State; and that legislation to that end, and of that character, is not inconsistent with any limitation or restriction imposed upon the exercise of the powers granted to Congress.

## 57. THE PLATT AMENDMENT, 1903

[The Teller Amendment to the Joint Resolution for War with Spain of 20 April 1898 had declared that the United States disclaimed any intention to exercise sovereignty over Cuba and asserted its determination to leave the government and control of the island to its people when its pacification had been completed. After the war General Wood, Military Governor of Cuba, summoned a convention which met in November 1900 and drew up a Constitution modelled upon that of the United States, but without any provision for future relations with that Power. On 2 March 1901 a series of clauses, known as the Platt Amendment, were added by Congress to the Army Appropriation Bill and these were accepted by the Cuban Government, added to their Constitution, and formulated in a Treaty on 22 May 1903.

Among other powers of control, these gave the United States the right to intervene in Cuba 'for the protection of life, property, and individual liberty.' The American Government first intervened in 1906, evacuated the island in 1909, and intervened again in 1912 and on several subsequent occasions, before the Amendment was abrogated in 1933 (see Vol. IV. No. 31).]

**ART. I.** The Government of Cuba shall never enter into any treaty or other compact with any foreign Power or Powers which will impair or tend to impair the independence of Cuba, nor in any manner authorize or permit any foreign Power or Powers to obtain by colonization or for military or naval purposes, or otherwise, lodgement in or control over any portion of said island.

ART. II. The Government of Cuba shall not assume or contract any public debt to pay the interest upon which, and to make reasonable sinking-fund provision for the ultimate discharge of which, the ordinary revenues of the Island of Cuba, after defraying the current expenses of the Government, shall be inadequate.

ART. III. The Government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a Government adequate for the protection of life, property, and individual liberty, and for discharging the obligations with respect to Cuba imposed by the Treaty of Paris on the United States, now to be assumed and undertaken by the Government of Cuba.

ART. IV. All Acts of the United States in Cuba during its military occupancy thereof are ratified and validated, and all lawful rights acquired thercunder shall be maintained and protected.

ART. V. The Government of Cuba will execute, and as far as necessary extend, the plans already devised or other plans to be mutually agreed upon, for the sanitation of the cities of the island, to the end that a recurrence of epidemics and infectious diseases may be prevented, thereby assuring protection to the people and commerce of Cuba, as well as to the commerce of the southern ports of the United States and the people residing therein.

ART. VI. The Isle of Pines shall be omitted from the boundaries of Cuba, specified in the Constitution, the title thereto being left to future adjustment by treaty.

ART. VII. To enable the United States to maintain the independence of Cuba, and to protect the people thereof, as well as for its own defense, the Government of Cuba will sell or lease to the United States lands necessary for coaling or naval stations at certain specified points to be agreed upon with the President of the United States. . . .

## 58. THE PANAMA CONVENTION, 1903

[The question of a canal across the Isthmus of Central America and the problem of a choice of route had been discussed since the sixteenth century. In 1850, by the Clayton-Bulwer Treaty, the United States and Great Britain agreed that neither Power would exercise any exclusive control over such a canal or fortify it or exercise dominion over it. In 1876 a concession which had been granted to a Lieutenant Wyse by the Government of Colombia, in which State lay the Isthmus of Panama, was bought by a French Company. From 1881 to 1886 the great French engineer, de Lesseps, endeavoured to construct a canal across the isthmus, but the company went bankrupt. A syndicate, known as the New Panama Canal Company, acquired the assets of the French Company.

The War with Spain in 1898 brought home to Americans the strategic possibilities of the canal, when the attack on Cuba had to be delayed while the battleship *Oregon* steamed 13,000 miles round Cape Horn from San Francisco. In 1901 the Hay-Pauncefote Treaty abrogated the Clayton-Bulwer agreement and established the principle that the canal, when constructed, should be open on equal terms to all nations. In June 1902 Congress passed the Spooner Act empowering the President to acquire the Panama concession for forty million dollars if the Government of Colombia would cede a strip of territory for the canal. If not, a concession for a canal was to be obtained from the Government of Nicaragua.

In January 1903, by the Herran-Hay Convention, Colombia agreed to cede the necessary territory in return for ten million dollars and an annual rental of a quarter of a million dollars, but the Colombian Senate refused to ratify the agreement. As a result a revolution took place in Panama on 3 November, with the complicity of the United States, which at once acknowledged the independence of the new Republic and on 18 November 1903 signed the Panama Convention for the construction of the canal. (The claims of Colombia were eventually settled in 1921 by a payment of twenty-five million dollars.) After William C. Gorgas had made the work possible by freeing the Canal Zone from yellow fever and malaria, work on the canal was begun in

1906. It was opened for commercial traffic in August 1914 and declared finally completed in 1920.]

ART. I. The United States guarantees and will maintain the independence of the Republic of Panama.

ART. II. The Republic of Panama grants to the United States in perpetuity the use, occupation and control of a zone of land and land under water for the construction, maintenance, operation, sanitation and protection of said Canal of the width of ten miles extending to the distance of five miles on each side of the centre line of the route of the canal to be constructed; the said zone beginning in the Caribbean Sea, three marine miles from mean low-water mark, and extending to and across the Isthmus of Panama into the Pacific Ocean to a distance of three marine miles from mean low-water mark, with the proviso that the cities of Panama and Colon and the harbors adjacent to said cities, which are included within the boundaries of the zone above described, shall not be included within this grant. The Republic of Panama further grants to the United States in perpetuity the use, occupation and control of any other lands and waters outside of the zone above described which may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said Canal or of any auxiliary canals or other works necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said enterprise.

The Republic of Panama further grants in like manner to the United States in perpetuity all islands within the limits of the zone above described and in addition thereto the group of small islands in the Bay of Panama, named Perico, Naos, Culebra and Flamenco.

ART. III. The Republic of Panama grants to the United States all the rights, power and authority within the zone mentioned and described in Article II of this agreement and within the limits of all auxiliary lands and waters mentioned and described in said Article II which the United States would possess and exercise if

it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority. . . .

ART. V. The Republic of Panama grants to the United States in perpetuity a monopoly for the construction, maintenance and operation of any system of communication by means of canal or railroad across its territory between the Caribbean Sea and the Pacific Ocean. . . .

ART. VII. The Republic of Panama grants to the United States within the limits of the cities of Panama and Colon and their adjacent harbors and within the territory adjacent thereto the right to acquire by purchase or by the exercise of the right of eminent domain, any lands, buildings, water rights or other properties necessary and convenient for the construction, maintenance, operation and protection of the Canal and of any works of sanitation, such as the collection and disposition of sewage and the distribution of water in the said cities of Panama and Colon, which, in the discretion of the United States, may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said Canal and railroad.

The Republic of Panama agrees that the cities of Panama and Colon shall comply in perpetuity with the sanitary ordinances whether of a preventive or curative character prescribed by the United States and in case the Government of Panama is unable or fails in its duty to enforce this compliance by the cities of Panama and Colon with the sanitary ordinances of the United States the Republic of Panama grants to the United States the right and authority to enforce the same.

The same right and authority are granted to the United States for the maintenance of public order in the cities of Panama and Colon and the territories and harbors adjacent thereto in case the Republic of Panama should not be, in the judgment of the United States, able to maintain such order.

ART. VIII. The Republic of Panama grants to the United States all rights which it now has or hereafter may acquire to the property of the New Panama Canal Company and the Panama Railroad Company as a result of the transfer of sovereignty from the Republic of Colombia to the Republic of Panama over the Isthmus of Panama and authorizes the New Panama Canal Company to sell and transfer to the United States its rights, privileges, properties and concessions as well as the Panama Railroad and all the shares or part of the shares of that company.

ART. IX. The United States agrees that the ports at either entrance of the Canal and the waters thereof and the Republic of Panama agrees that the towns of Panama and Colon shall be free for all time so that there shall not be imposed or collected custom house tolls, tonnage, anchorage, lighthouse, wharf, pilot or quarantine dues or any other charges or taxes of any kind upon any vessel using or passing through the Canal or belonging to or employed by the United States, directly or indirectly, in connection with the construction, maintenance, operation, sanitation and protection of the main Canal, or auxiliary works, or upon the cargo, officers, crew or passengers of any such vessels, except such tolls and charges as may be imposed by the United States for the use of the Canal and other works, and except tolls and charges imposed by the Republic of Panama upon merchandise destined to be introduced for the consumption of the rest of the Republic of Panama, and upon vessels touching at the ports of Colon and Panama and which do not cross the Canal.

The Government of the Republic of Panama shall have the right to establish in such ports and in the towns of Panama and Colon such houses and guards as it may deem necessary to collect duties on importations destined to other portions of Panama and to prevent contraband trade. The United States shall have the right to make use of the towns and harbors of Panama and Colon as places of anchorage, and for making repairs, for loading, unloading, depositing or

trans-shipping cargoes either in transit or destined for the service of the canal and for other works pertaining to the Canal.

ART. X. The Republic of Panama agrees that there shall not be imposed any taxes, national, municipal, departmental or of any other class upon the Canal, the railways and auxiliary works, tugs and other vessels employed in the service of the Canal, storehouse, workshops, offices, quarters for laborers, factories of all kinds, warehouses, wharves, machinery and other works, property, and effects appertaining to the Canal or railroad and auxiliary works, or their officers or employees, situated within the cities of Panama and Colon, and that there shall not be imposed contributions or charges of a personal character of any kind upon officers, employees, laborers and other individuals in the service of the Canal and railroad and auxiliary works. . . .

ART. XIV. As the price or compensation for the rights, powers and privileges granted in this convention by the Republic of Panama to the United States, the Government of the United States agrees to pay to the Republic of Panama the sum of ten million dollars (\$10,000,000) in gold coin of the United States on the exchange of the ratification of this convention and also an annual payment during the life of this convention of two hundred and fifty thousand dollars (\$250,000) in like gold coin, beginning nine years after the date aforesaid. . . .

ART. XVIII. The Canal, when constructed, and the entrances thereto, shall be neutral in perpetuity, and shall be opened upon the terms provided for by Section 1 of Article III of, and in conformity with all the stipulations of, the treaty entered into by the Governments of the United States and Great Britain on 18 November 1901.

ART. XIX. The Government of the Republic of Panama shall have the right to transport over the Canal its vessels and its troops and munitions of war in such vessels at all times without paying charges of any kind. The exemption is to be extended to the auxiliary railway

for the transportation of persons in the service of the Republic of Panama, or of the police force charged with the preservation of public order outside of said zone, as well as to their baggage, munitions of war and supplies. . . .

ART. XXII. The Republic of Panama renounces and grants to the United States the participation to which it might be entitled in the future earnings of the Canal under Article XV of the concessionary contract with Lucien N. B. Wyse, now owned by the New Panama Canal Company, and any and all other rights or claims of a pecuniary nature arising under or relating to said concession, or arising under or relating to the concessions to the Panama Railroad Company or any extension or modification thereof; and it likewise renounces, confirms and grants to the United States, now and hereafter, all the rights and property reserved in the said concessions which otherwise would belong to Panama at or before the expiration of the terms of ninety-nine years of the concessions granted to or held by the above-mentioned party and companies, and all right, title and interest which it now has or may hereafter have, in and to the lands, canal, works, property and rights held by the said companies under said concessions or otherwise, and acquired or to be acquired by the United States from or through the New Panama Canal Company, including any property and rights which might or may in the future, either by lapse of time, forfeiture or otherwise, revert to the Republic of Panama under any contracts or concessions, with said Wyse, the Universal Panama Canal Company, the Panama Railroad Company and the New Panama Canal Company.

ART. XXIII. If it should become necessary at any time to employ armed forces for the safety or protection of the Canal, or of the ships that make use of the same, or the railways and auxiliary works, the United States shall have the right, at all times and in its discretion, to use its police and its land and naval forces or to establish fortifications for these purposes.

ART. XXIV. No change either in the Government or in the laws and treaties of the Republic of Panama shall, without the consent of the United States, affect any right of the United States under the present convention, or under any treaty stipulation between the two countries that now exists or may hereafter exist touching the subject-matter of this convention.

If the Republic of Panama shall hereafter enter as a constituent into any other Government or into any union or confederation of States, so as to merge her sovereignty or independence in such Government, union or confederation, the rights of the United States under this convention shall not be in any respect lessened or impaired.

ART. XXV. For the better performance of the engagements of this convention and to the end of the efficient protection of the Canal and the preservation of its neutrality, the Government of the Republic of Panama will sell or lease to the United States lands adequate and necessary for naval or coaling stations on the Pacific coast and on the western Caribbean coast of the Republic at certain points to be agreed upon with the President of the United States. . . .

JOHN HAY—BUNAU-VARILLA.

## 59. NORTHERN SECURITIES COMPANY *v. UNITED STATES, 1904*

[With this case Theodore Roosevelt brought the Sherman Anti-Trust Act into operation once more. In 1901 the Hill-Morgan and the Harriman Railways had consolidated under the Northern Securities Company, a holding company to hold the stock of the rival interests. By this process Harriman hoped eventually to gain control of every important railway in the country. This case decided that a holding company was covered by the Sherman Act. It also greatly enhanced the popularity of the President and inaugurated his great struggle with the trusts.]

HARLAN, J. . . . The Government charges that if the combination was held not to be in violation of the Act of Congress, then all efforts of the national government to preserve to the people the benefits of free competition among carriers engaged in interstate commerce will be wholly unavailing, and all transcontinental lines, indeed the entire railway systems of the country, may be absorbed, merged and consolidated, thus placing the public at the absolute mercy of the holding corporation.

. . . In our judgment, the evidence fully sustains the material allegations of the Bill, and shows a violation of the Act of Congress, in so far as it declares illegal every combination or conspiracy in restraint of commerce among the several States and with foreign nations, and forbids attempts to monopolize such commerce or any part of it.

Summarizing the principal facts, it is indisputable upon this record that under the leadership of the defendants Hill and Morgan the stockholders of the Great Northern and Northern Pacific Railway corporations, having competing and substantially parallel lines from the Great Lakes and the Mississippi River to the Pacific Ocean at Puget Sound, combined and conceived the scheme of organizing a corporation under the laws of New Jersey, which should *hold* the shares of the stock of the constituent companies, such shareholders, in lieu of their shares in these companies, to receive, upon an agreed basis of value, shares in the holding corporation; that pursuant to such combination the Northern Securities Company was organized as the holding corporation through which the scheme should be executed; and under that scheme such holding corporation has become the holder—more properly speaking, the custodian—of more than nine-tenths of the stock of the Northern Pacific, and more than three-fourths of the stock of the Great Northern, the stockholders of the companies who delivered their stock receiving upon the agreed basis shares of stock in the holding corporation. The stockholders of these two competing companies disappeared, as such, for

the moment, but immediately reappeared as stockholders of the holding company which was thereafter to guard the interests of both sets of stockholders as a unit, and to manage, or cause to be managed, both lines of railroad as if held *in one ownership*. Necessarily by this combination or arrangement the holding company in the fullest sense dominates the situation in the interest of those who were stockholders of the constituent companies; as much so, for every practical purpose, as if it had been itself a railroad corporation which had built, owned, and operated both lines for the exclusive benefit of its stockholders. Necessarily, also, the constituent companies ceased, under such a combination, to be in active competition for trade and commerce along their respective lines, and have become, practically, one powerful consolidated corporation, by the name of a holding corporation, the principal, if not the sole, object for the formation of which was to carry out the purpose of the original combination under which competition between the constituent companies would cease. Those who were stockholders of the Great Northern and Northern Pacific and became stockholders in the holding company are now interested in preventing all competition between the two lines, and as holders of stock or of certificates of stock in the holding company, they will see to it that no competition is tolerated.

Is the Act to be construed as forbidding every combination or conspiracy in restraint of trade or commerce among the States or with foreign nations? Or, does it embrace only such restraints as are unreasonable in their nature? Is the motive with which a forbidden combination or conspiracy was formed at all material when it appears that the necessary tendency of the particular combination or conspiracy in question is to restrict or suppress free competition between competing railroads engaged in commerce among the States? Does the Act of Congress prescribe, as a *rule* for *interstate* or *international* commerce, that the operation of the natural laws of competition between those engaged

in *such* commerce shall not be restricted or interfered with by any contract, combination or conspiracy?

How far may Congress go in regulating the affairs or conduct of State corporations engaged as carriers in commerce among the States, or of State corporations which, although not directly engaged themselves in *such* commerce, yet have control of the business of interstate carriers? . . .

. . . We will not incumber this opinion by extended extracts from the former opinions of this court. It is sufficient to say that from the decisions in the above cases certain propositions are plainly deducible and embrace the present case. Those propositions are:

That although the Act of Congress known as the Anti-Trust Act has no reference to the mere manufacture or production of articles or commodities within the limits of the several States, it does embrace and declare to be illegal every contract, combination or conspiracy, in whatever form, of whatever nature, and whoever may be parties to it, which directly or necessarily operates *in restraint of trade or commerce among the several States or with foreign nations*;

That the Act is not limited to restraints of interstate and international trade or commerce that are unreasonable in their nature, but embraces *all* direct *restraints* imposed by any combination, conspiracy or monopoly upon such trade or commerce;

That railroad carriers engaged in interstate or international commerce are embraced by the Act;

That combinations even among *private* manufacturers or dealers whereby interstate or international commerce is restrained are equally embraced by the Act;

That Congress has the power to establish *rules* by which *interstate and international* commerce shall be governed, and, by the Anti-Trust Act, has prescribed the rule of free competition among those engaged in such commerce;

That *every* combination or conspiracy which would extinguish competition between otherwise competing railroads engaged in *interstate trade or commerce*, and which

would *in that way* restrain such trade or commerce, is made illegal by the Act;

That the natural effect of competition is to increase commerce, and an agreement whose direct effect is to prevent this play of competition restrains instead of promotes trade and commerce;

That to vitiate a combination, such as the Act of Congress condemns, it need not be shown that the combination, in fact, results or will result in a total suppression of trade or in a complete monopoly, but it is only essential to show that by its necessary operation it tends to restrain interstate or international trade or commerce and to deprive the public of the advantages that flow from free competition;

That the constitutional guarantee of liberty of contract does not prevent Congress from prescribing the rule of free competition for those engaged in *interstate and international* commerce; and,

That under its power to regulate commerce among the several States and with foreign nations, Congress had authority to enact the statute in question. . . .

It is said that whatever may be the power of a State over such subjects Congress cannot forbid single individuals from disposing of their stock in a state corporation, even if such corporation be engaged in interstate and international commerce; that the holding or purchase by a state corporation or the purchase by individuals, of the stock of another corporation, for whatever purposes, are matters in respect of which Congress has no authority under the Constitution, that, so far as the power of Congress is concerned, citizens or State corporations may dispose of their property and invest their money in any way they choose; and that in regard to all such matters, citizens and State corporations are subject, if to any authority, only to the lawful authority of the State in which such citizens reside, or under whose laws such corporations are organized. It is unnecessary in this case to consider such abstract, general questions. The court need not now concern itself with them. . . .

In this connection, it is suggested that the contention of the Government is that the acquisition is itself interstate commerce, if that corporation be engaged in interstate commerce. This suggestion is made in different ways, sometimes in express words, at other times by implication. For instance, it is said that the question here is whether the power of Congress over interstate commerce extends to the regulation of the ownership of the stock in State railroad companies, by reason of their being engaged in such commerce. Again it is said that the only issue in this case is whether the Northern Securities Company can acquire and hold stock in other state corporations. Still further, it is asked, generally, whether the organization or ownership of railroads is not under the control of the States under whose laws they came into existence? Such statements as to the issues in this case are, we think, wholly unwarranted and are very wide of the mark; it is the setting up of mere men of straw to be easily stricken down. . . . What the Government particularly complains of, indeed, all that it complains of here, is the existence of a combination among the stockholders of competing railroad companies which in violation of the Act of Congress restrains interstate and international commerce through the agency of a common corporate trustee designated to act for both companies in repressing free competition between them. Independently of any question of the mere ownership of stock or of the organization of a State corporation, can it in reason be said that such a combination is not embraced by the very terms of the Anti-Trust Act? May not Congress declare that *combination* to be illegal? If Congress legislates for the protection of the public, may it not proceed on the ground that wrongs when effected by a powerful combination are more dangerous and require more stringent supervision than when they are effected by a single person?

Whether the free operation of the normal laws of competition is a wise and wholesome rule for trade and commerce is an economic question which this court

need not consider or determine. Undoubtedly, there are those who think that the general business interests and prosperity of the country will be best promoted if the rule of competition is not applied. But there are others who believe that such a rule is more necessary in these days of enormous wealth than it ever was in any former period of our history. Be all this as it may, Congress has, in effect, recognized the rule of free competition by declaring illegal every combination or conspiracy in restraint of interstate and international commerce. As in the judgment of Congress the public convenience and the general welfare will be best subserved when the natural laws of competition are left undisturbed by those engaged in interstate commerce, and as Congress has embodied that rule in a statute, that must be, for all, the end of the matter, if this is to remain a government of laws, and not of men. . . .

. . . If private parties may not, by combination among themselves, restrain interstate and international commerce in violation of an Act of Congress, much less can such restraint be tolerated when imposed or attempted to be imposed upon commerce as carried on over public highways.

Indeed, if the contentions of the defendants are sound, why may not *all* the railway companies in the United States, that are engaged, under State charters, in interstate and international commerce, enter into a combination such as the one here in question, and by the device of a holding corporation obtain the absolute control throughout the entire country of rates for passengers and freight, beyond the power of Congress to protect the public against their exactions? The argument in behalf of the defendants necessarily leads to such results, and places Congress, although invested by the people of the United States with full authority to regulate interstate and international commerce, in a condition of utter helplessness, so far as the protection of the public against such combinations is concerned. . . .

There was no actual investment, in any substantial

sense, by the Northern Securities Company in the stock of the two constituent companies. If it was, in form, such a transaction, it was not, in fact, one of that kind. However that company may have acquired for itself the stock in the Great Northern and Northern Pacific Railway companies, no matter how it obtained the means to do so, all the stock it held or acquired in the constituent companies was acquired and held to be used in suppressing competition between those companies. It came into existence only for that purpose. . . .

Guided by these long established rules of construction, it is manifest that if the Anti-Trust Act is held not to embrace a case such as is now before us, the plain intention of the legislative branch of the Government will be defeated. If Congress has not, by the words used in the Act, described this and like cases, it would, we apprehend, be impossible to find words that would describe them. . . .

#### 60. LOCHNER *v.* NEW YORK, 1905

[The Legislature of New York passed a law limiting the hours of work in bakeries to not more than sixty hours a week or ten hours a day. This Act was challenged on the grounds that it was a breach of the Fourteenth Amendment and was not covered by the 'police power' of the State (see the Slaughter-house Cases, No. 29). The court held that the Act was invalid.

Justice Holmes' dissenting judgment is most worthy of notice. The court, in fact, gave a number of somewhat conflicting verdicts on this subject. In the case of *Holden v. Hardy* (1898) they had allowed the validity of a Utah law limiting the hours of work in mines to ten hours a day; in the case of *Muller v. Oregon* (1908) they upheld an Oregon law limiting female work in factories and laundries to ten hours a day; and in the case of *Bunting v. Oregon* (1917) they upheld another Oregon law limiting all work in factories to ten hours a day with certain provisions for overtime work.]

PECKHAM, J. . . . The statute necessarily interferes with the right of contract between the employer and employees, concerning the number of hours in which the latter may labor in the bakery of the employer. The general right to make a contract in relation to his business is part of the liberty of the individual protected by the Fourteenth Amendment of the Federal Constitution. Under that provision no State can deprive any person of life, liberty, or property without due process of law. The right to purchase or to sell labor is part of the liberty protected by this amendment, unless there are circumstances which exclude the right. There are, however, certain powers, existing in the sovereignty of each State in the Union, somewhat vaguely termed police powers, the exact description and limitation of which have not been attempted by the courts. These powers, broadly stated and without, at present, any attempt at a more specific definition, relate to the safety, health, morals, and general welfare of the public. Both property and liberty are held on such reasonable conditions as may be imposed by the governing power of the State in the exercise of those powers, and with such conditions the Fourteenth Amendment was not designed to interfere.

. . . This court has recognized the existence and upheld the exercise of the police powers of the States in many cases which might fairly be considered as border ones, and it has, in the course of its determination of questions regarding the asserted invalidity of such statutes, on the ground of their violation of the rights secured by the Federal Constitution, been guided by rules of a very liberal nature, the application of which has resulted, in numerous instances, in upholding the validity of State statutes thus assailed. . . .

It must, of course, be conceded that there is a limit to the valid exercise of the police power by the State. There is no dispute concerning this general proposition. Otherwise the Fourteenth Amendment would have no efficacy and the legislatures of the States would have unbounded power, and it would be enough to say that

any piece of legislation was enacted to conserve the morals, the health, or the safety of the people; such legislation would be valid, no matter how absolutely without foundation the claim might be. The claim of the police power would be a mere pretext—become another and delusive name for the supreme sovereignty of the State to be exercised free from constitutional restraint. This is not contended for. In every case that comes before this court, therefore, where legislation of this character is concerned, and where the protection of the Federal Constitution is sought, the question necessarily arises: Is this a fair, reasonable, and appropriate exercise of the police power of the State, or is it an unreasonable, unnecessary, and arbitrary interference with the right of the individual to his personal liberty or to enter into those contracts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family? Of course the liberty of contract relating to labor includes both parties to it. The one has as much right to purchase as the other to sell labor.

This is not a question of substituting the judgment of the court for that of the legislature. If the Act be within the power of the State it is valid, although the judgment of the court might be totally opposed to the enactment of such a law. But the question would still remain: Is it within the police power of the State? and that question must be answered by the court.

The question whether this Act is valid as a labor law, pure and simple, may be dismissed in a few words. There is no reasonable ground for interfering with the liberty of person or the right of free contract, by determining the hours of labor, in the occupation of a baker. There is no contention that bakers as a class are not equal in intelligence and capacity to men in other trades or manual occupations, or that they are not able to assert their rights and care for themselves without the protecting arm of the State, interfering with their independence of judgment and of action. They are in no sense wards of the State. Viewed in the light of a purely labor law, with no reference whatever to the

question of health, we think that a law like the one before us involves neither the safety, the morals, nor the welfare, of the public, and that the interest of the public is not in the slightest degree affected by such an Act. The law must be upheld, if at all, as a law pertaining to the health of the individual engaged in the occupation of a baker. It does not affect any other portion of the public than those who are engaged in that occupation. Clean and wholesome bread does not depend upon whether the baker works but ten hours per day or only sixty hours a week. The limitation of the hours of labor does not come within the police power on that ground.

It is a question of which of two powers or rights shall prevail—the power of the State to legislate or the right of the individual to liberty of person and freedom of contract. The mere assertion that the subject relates, though but in a remote degree, to the public health, does not necessarily render the enactment valid. The Act must have a more direct relation, as a means to an end, and the end itself must be appropriate and legitimate before an Act can be held to be valid which interferes with the general right of an individual to be free in his person and in his power to contract in relation to his own labor. . . .

We think the limit of the police power has been reached and passed in this case. There is, in our judgment, no reasonable foundation for holding this to be necessary or appropriate as a health law to safeguard the public health, or the health of the individuals who are following the trade of a baker. If this statute be valid, and if, therefore, a proper case is made out in which to deny the right of an individual, *sui juris*, as employer or employee, to make contracts for the labor of the latter under the protection of the provisions of the Federal Constitution, there would seem to be no length to which legislation of this nature might not go. . . .

We think that there can be no fair doubt that the trade of a baker, in and of itself, is not an unhealthy one to that degree which would authorize the legislature

to interfere with the right to labor, and with the right of free contract on the part of the individual, either as employer or employé. In looking through statistics regarding all trades and occupations, it may be true that the trade of a baker does not appear to be as healthy as some other trades, and is also vastly more healthy than still others. To the common understanding the trade of a baker has never been regarded as an unhealthy one. Very likely physicians would not recommend the exercise of that or of any other trade as a remedy for ill health. Some occupations are more healthy than others, but we think there are none which might not come under the power of the legislature to supervise and control the hours of working therein, if the mere fact that the occupation is not absolutely and perfectly healthy is to confer that right upon the legislative department of the Government. It might be safely affirmed that almost all occupations more or less affect the health. There must be more than the mere fact of the possible existence of some small amount of unhealthiness to warrant legislative interference with liberty. It is unfortunately true that labor, even in any department, may possibly carry with it the seeds of unhealthiness. But are we all, on that account, at the mercy of legislative majorities? A printer, a tinsmith, a locksmith, a carpenter, a cabinetmaker, a dry goods clerk, a bank's, a lawyer's, or a physician's clerk, or a clerk in almost any kind of business would all come under the power of the legislature on this assumption. No trade, no occupation, no mode of earning one's living could escape this all-pervading power, and the Acts of the legislature in limiting the hours of labor in all employments would be valid, although such limitation might seriously cripple the ability of the laborer to support himself and his family. In our large cities there are many buildings into which the sun penetrates for but a short time in each day, and these buildings are occupied by people carrying on the business of bankers, brokers, lawyers, real estate, and many other kinds of business, aided by

many clerks, messengers, and other employes. Upon the assumption of the validity of this Act under review, it is not possible to say that an Act prohibiting lawyers' or bank clerks, or others, from contracting to labor for their employers more than eight hours a day would be invalid. It might be said that it is unhealthy to work more than that number of hours in an apartment lighted by artificial light during the working hours of the day; that the occupation of the bank clerk, the lawyer's clerk, the real estate clerk, or the broker's clerk in such offices is therefore unhealthy, and the legislature in its paternal wisdom must, therefore, have the right to legislate on the subject of and to limit the hours for such labor, and if it exercises that power and its validity be questioned, it is sufficient to say, it has reference to the public health; it has reference to the health of the employes condemned to labor day after day in buildings where the sun never shines; it is a health law, and therefore it is valid, and cannot be questioned by the courts.

It is also urged, pursuing the same line of argument, that it is to the interest of the State that its population should be strong and robust, and therefore any legislation which may be said to tend to make people healthy must be valid as health laws, enacted under the police power. Scarcely any law but might find shelter under such assumptions, and conduct, properly so called, as well as contract would come under the restrictive sway of the legislature. Not only the hours of employes, but the hours of employers, could be regulated, and doctors, lawyers, scientists, all professional men, as well as athletes and artisans, could be forbidden to fatigue their brains and bodies by prolonged hours of exercise, lest the fighting strength of the State be impaired. We mention these extreme cases because the contention is extreme. We do not believe in the soundness of the views which uphold this law. On the contrary, we think that such a law as this, although passed in the assumed exercise of the police power, and as relating to the public health, or the health of the employes named,

is not within that power, and is invalid. The Act is not, within any fair meaning of the term, a health law, but is an illegal interference with the rights of individuals, both employers and employes, to make contracts regarding labor upon such terms as they may think best, or which they may agree upon with the other parties to such contracts. Statutes of the nature of that under review, limiting the hours in which grown and intelligent men may labor to earn their living, are mere meddlesome interferences with the rights of the individual, and they are not saved from condemnation by the claim that they are passed in the exercise of the police power and upon the subject of the health of the individual whose rights are interfered with, unless there be some fair ground, reasonable in and of itself, to say that there is material danger to the public health or to the health of the employes, if the hours of labor are not curtailed.

It is impossible for us to shut our eyes to the fact that many of the laws of this character, while passed under what is claimed to be the police power for the purpose of protecting the public health or welfare, are, in reality, passed from other motives. We are justified in saying so when, from the character of the law and the subject upon which it legislates, it is apparent that the public health or welfare bears but the most remote relation to the law. The purpose of a statute must be determined from the natural and legal effect of the language employed; and whether it is or is not repugnant to the Constitution of the United States must be determined from the natural effect of such statutes when put into operation, and not from their proclaimed purpose. . . . The court looks beyond the mere letter of the law in such cases. . . .

It is manifest to us that the limitation of the hours of labor as provided for in this section of the statute under which the indictment was found and the plaintiff in error convicted has no such direct relation to and no such substantial effect upon the health of the employee as to justify us in regarding the section as really a health law. It seems to us that the real object and purpose

were simply to regulate the hours of labor between the master and his employees (all being men, *sui juris*) in a private business, not dangerous in any degree to morals or in any real and substantial degree to the health of the employees. Under such circumstances the freedom of master and employee to contract with each other in relation to their employment, and in defining the same, cannot be prohibited or interfered with without violating the Federal Constitution.

Judgment reversed.

HOLMES, J., dissenting. . . . The case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law. It is settled by various decisions of this court that state constitutions and state laws may regulate life in many ways which we as legislators might think as injudicious, or if you like as tyrannical, as this, and which, equally with this, interfere with the liberty to contract. Sunday laws and usury laws are ancient examples. A more modern one is the prohibition of lotteries. The liberty of the citizen to do as he likes so long as he does not interfere with the liberty of others to do the same, which has been a shibboleth for some well-known writers, is interfered with by school laws, by the post-office, by every state or municipal institution which takes his money for purposes thought desirable, whether he likes it or not. The Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics. . . . United States and state statutes and decisions cutting down the liberty to contract by way of combination are familiar to this court. . . . Some of these laws embody convictions or prejudices which judges are likely to share. Some may not. But a constitution is not intended to embody a particular economic theory,

whether of paternalism and the organic relation of the citizen to the state or of *laissez-faire*. It is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar, or novel, and even shocking, ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States.

General propositions do not decide concrete cases. The decision will depend on a judgment or intuition more subtle than any articulate major premise. But I think that the proposition just stated, if it is accepted, will carry us far toward the end. Every opinion tends to become a law. I think that the word 'liberty,' in the Fourteenth Amendment, is perverted when it is held to prevent the natural outcome of a dominant opinion, unless it can be said that a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law. It does not need research to show that no such sweeping condemnation can be passed upon the statute before us. A reasonable man might think it a proper measure on the score of health. Men whom I certainly could not pronounce unreasonable would uphold it as a first instalment of a general regulation of the hours of work. Whether in the latter aspect it would be open to the charge of inequality I think it unnecessary to discuss.

## 61. THE CONSTITUTION OF OREGON: THE RECALL, 1908

[The principle of the Recall was first instituted in Los Angeles, California, in 1903, and was adopted in the State of Oregon in 1908. It has now been adopted by twelve States. By this plan a certain number of voters—in Oregon twenty-five per cent.—may petition for a new election of any public officer, and so force a referendum on his right to continue in office.]

§ 18. *Recall*.—Every public officer in Oregon is subject, as herein provided, to recall by the legal voters of the State or of the electoral district from which he is elected. There may be required twenty-five per cent., but not more, of the number of electors who voted in his district at the preceding election for Justice of the Supreme Court to file their petition demanding his recall by the people. They shall set forth in said petition the reasons for said demand. If he shall offer his resignation, it shall be accepted and take effect on the day it is offered, and the vacancy shall be filled as may be provided by law. If he shall not resign within five days after the petition is filed, a special election shall be ordered to be held within twenty days in his said electoral district to determine whether the people will recall said officer. On the sample ballot at said election shall be printed, in not more than two hundred words, the reasons for demanding the recall of said officer as set forth in the recall petition, and in not more than two hundred words the officer's justification of his course in office. He shall continue to perform the duties of his office until the result of said special election shall be officially declared. Other candidates for the office may be nominated to be voted for at said special election. The candidate who shall receive the highest number of votes shall be deemed elected for the remainder of the term, whether it be the person against whom the recall petition was filed or another. The recall petition shall be filed with the officer with whom a petition for nomination to such office should be filed, and the same officer shall order the special election when it is required. No such petition shall be circulated against any officer until he has actually held his office six months, save and except that it may be filed against a senator or representative in the legislative assembly at any time after five days from the beginning of the first session after his election. After one such petition and special election no further recall petition shall be filed against the same officer during the term for which he was

elected unless such further petitioners shall first pay into the public treasury, which has paid such special election expenses, the whole amount of its expenses for the preceding special election. Such additional legislation as may aid the operation of this section shall be provided by the legislative assembly, including provision for payment by the public treasury of the reasonable special election campaign expenses of such officer. But the words, 'the legislative assembly shall provide,' or any similar or equivalent words in this constitution or any amendment thereto, shall not be construed to grant to the legislative assembly any exclusive power of law-making nor in any way to limit the initiative and referendum powers reserved by the people.

## 62. ADAIR *v.* UNITED STATES, 1908

[Congress in 1898 passed an Act prohibiting 'carriers engaged in interstate commerce' from forcing their employees to bind themselves not to belong to a labour organization. It was claimed that this clause was a breach of the Fifth Amendment of the Constitution, which stated that 'no person shall be . . . deprived of life, liberty, or property without due process of law.' Justice Harlan's judgment held that the liberty under the Amendment 'embraced the right to make contracts for the purchase of the labor of others, and equally the right to make contracts for the sale of one's own labor.' This case was a severe blow to the Labour movement in the United States.]

HARLAN, J.—This case involves the constitutionality of certain provisions of the Act of Congress of 1 June 1898, . . . concerning carriers engaged in interstate commerce and their employees. . . .

The 10th section upon which the present prosecution is based is, in these words:

'That any employer subject to the provisions of this Act, . . . who shall require any employee, or any

person seeking employment, as a condition of such employment, to enter into an agreement, either written or verbal, not to become or remain a member of any labor corporation, association, or organization; . . . is hereby declared to be guilty of a misdemeanor. . . .

The specific charge . . . was 'that said William Adair, agent and employee of said common carrier and employer, . . . did unlawfully and unjustly discriminate against O. B. Coppage, employee, . . . by then and there discharging said O. B. Coppage from such employment . . . because of his membership in said labor organization and thereby did unjustly discriminate against an employee of a common carrier and employer engaged in interstate commerce because of his membership in a labor organization, contrary to the forms of the Statute.' . . .

May Congress make it a criminal offense against the United States—as by the 10th section of the Act of 1898 it does—for an agent or officer of an interstate carrier, . . . to discharge an employee from service simply because of his membership in a labor organization? . . .

The first inquiry is whether the part of the 10th section of the Act of 1898 upon which the first count of the indictment is based is repugnant to the 5th Amendment of the Constitution, declaring that no person shall be deprived of liberty or property without due process of law. In our opinion that section in the particular mentioned is an invasion of the personal liberty, as well as of the right of property, guaranteed by that Amendment. Such liberty and right embrace the right to make contracts for the purchase of the labor of others, and equally the right to make contracts for the sale of one's own labor; each right, however, being subject to the fundamental condition that no contract, whatever its subject-matter, can be sustained which the law, upon reasonable grounds, forbids as inconsistent with the public interest, or as hurtful to the public order, or as detrimental to the common good. . . . It is sufficient in this case to say that, as agent of the railroad company, and, as such, responsible for the

conduct of the business of one of its departments, it was the defendant Adair's right—and that right inhered in his personal liberty, and was also a right of property—to serve his employer as best he could, so long as he did nothing that was reasonably forbidden by law as injurious to the public interest. It was the right of the defendant to prescribe the terms upon which the services of Coppage would be accepted, and it was the right of Coppage to become or not, as he chose, an employee of the railroad company upon the terms offered to him. . . .

In every case that comes before this court, therefore, where legislation of this character is concerned, . . . the question necessarily arises: Is this a fair, reasonable, and appropriate exercise of the police power of the State, or is it an unreasonable, unnecessary, and arbitrary interference with the right of the individual to his personal liberty or to enter into those contracts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family? . . .

While, . . . the right of liberty and property guaranteed by the Constitution against deprivation without due process of law is subject to such reasonable restraints as the common good or the general welfare may require, it is not within the functions of government . . . to compel any person in the course of his business and against his will, to accept or retain the personal services of another, or to compel any person, against his will, to perform personal services for another. . . .

As the relations and the conduct of the parties towards each other was not controlled by any contract other than a general employment on one side to accept the services of the employee and a general agreement on the other side to render services to the employer—no term being fixed for the continuance of the employment—Congress could not, consistently with the 5th Amendment, make it a crime against the United States to discharge the employee because of his being a member of a labor organization.

But it is suggested that the authority to make it a crime . . . can be referred to the power of Congress to regulate interstate commerce, without regard to any question of personal liberty or right of property arising under the 5th Amendment. This suggestion can have no bearing in the present discussion unless the statute, in the particular just stated, is, within the meaning of the Constitution, a regulation of commerce among the States. If it be not, then clearly the Government cannot invoke the commerce clause of the Constitution as sustaining the indictment against Adair. . . .

Looking alone at the words of the statute for the purpose of ascertaining its scope and effect, and of determining its validity, we hold that there is no such connection between interstate commerce and membership in a labor organization as to authorize Congress to make it a crime against the United States for an agent of an interstate carrier to discharge an employee because of such membership on his part. . . .

It results, on the whole case, that the provision of the statute under which the defendant was convicted must be held to be repugnant to the 5th Amendment and as not embraced by nor within the power of Congress to regulate interstate commerce, but, under the guise of regulating commerce, and as applied to this case, it arbitrarily sanctions an illegal invasion of the personal liberty as well as the right of property of the defendant Adair.

63. THE STANDARD OIL COMPANY OF  
NEW JERSEY *v.* UNITED STATES,  
1911

[The Standard Oil Trust (see No. 34) was declared illegal by the Ohio Supreme Court in 1890 and dissolved in 1899. However, it was found possible to reorganize it in another State under the name of the Standard Oil Company of New

Jersey. In 1911 the Supreme Court decided that this Company was a violation of the Sherman Anti-Trust Act, and it was again dissolved.

The case is principally important because in its judgment the Court decided to adopt the famous 'rule of reason,' that the Act was only intended to cause the suppression of those monopolistic organizations which constituted an 'undue or unreasonable' restraint of trade. (Under Common Law 'undue or unreasonable' restraint of trade was illegal, but the Federal Courts had no Common Law jurisdiction. The question was whether the Sherman Act merely granted these Courts this jurisdiction or whether it was intended to go further.)]

WHITE, C. J. . . . It is certain that only one point of concord between the parties is discernible, which is, that the controversy in every aspect is controlled by a correct conception of the meaning of the first and second sections of the Anti-Trust Act. . . . We shall make our investigation under four separate headings: First, the text of the first and second sections of the Act originally considered and its meaning in the light of the common law and the law of this country at the time of its adoption; second, the contentions of the parties concerning the Act, and the scope and effect of the decisions of this court upon which they rely. . . .

In view of the common law and the law in this country as to restraint of trade, which we have reviewed, and the illuminating effect which that history must have under the rule to which we have referred, we think it results:

(a) That the context manifests that the statute was drawn in the light of the existing practical conception of the law of restraint of trade, because it groups as within that class, not only contracts which were in restraint of trade in the subjective sense, but all contracts or Acts which theoretically were attempts to monopolize, yet which in practice had come to be considered as in restraint of trade in a broad sense.

(b) That in view of the many new forms of contracts and combinations which were being evolved from existing economic conditions, it was deemed essential

by an all-embracing enumeration to make sure that no form of contract or combination by which an undue restraint of interstate or foreign commerce was brought about could save such restraint from condemnation. The statute under this view evidenced the intent not to restrain the right to make and enforce contracts, whether resulting from combination or otherwise, which did not unduly restrain interstate or foreign commerce, but to protect that commerce from being restrained by methods, whether old or new, which would constitute an interference that is an undue restraint.

(c) And as the contracts or Acts embraced in the provision were not expressly defined, since the enumeration addressed itself simply to classes of Acts, those classes being broad enough to embrace every conceivable contract or combination which could be made concerning trade or commerce or the subjects of such commerce, and thus caused any act done by any of the enumerated methods anywhere in the whole field of human activity to be illegal if in restraint, it inevitably follows that the provision necessarily called for the exercise of judgment which required that some standard should be resorted to for the purpose of determining whether the prohibitions contained in the statute had or had not in any given case been violated. Thus not specifying, but indubitably contemplating and requiring a standard, it follows that it was intended that the standard of reason which had been applied at the common law and in this country, in dealing with subjects of the character embraced by the statute, was intended to be the measure used for the purpose of determining whether in a given case a particular Act had or had not brought about the wrong against which the statute provided. . . .

## 64. THEODORE ROOSEVELT'S SPEECH BEFORE THE OHIO CONSTITUTIONAL CONVENTION, 1912

[Theodore Roosevelt refused to accept the Republican nomination in 1908, and under his successor, Taft, the Republican party returned to the policy of its more conservative section. In 1910 Roosevelt began his attacks on Taft's administration and on 10 February 1912 he received an invitation from seven progressive Republican Governors to stand for the Republican nomination at the presidential election. On 21 February, in a speech at the Ohio Constitutional Convention, he outlined his programme and on 24 February he accepted the invitation. The Republican National Convention chose Taft, and Roosevelt's supporters formed a new party, the Progressives. This split in the Republican party led to the victory of the Democrats in the Presidential Election.

In his speech at Columbus, Ohio, Roosevelt advocated an extension of the police power of the States and also the adoption of the principles of the Initiative, the Referendum, and the Recall of Judicial Decisions.]

. . . The only safe course to follow in this great American democracy is to provide for making the popular judgment really effective.

When this is done, then it is our duty to see that the people, having the full power, realize their heavy responsibility for exercising that power aright.

But it is a false constitutionalism, a false statesmanship, to endeavor by the exercise of a perverted ingenuity to seem to give the people full power and at the same time to trick them out of it. Yet this is precisely what is done in every case where the State permits its representatives, whether on the bench or in the legislature or in executive office, to declare that it has not the power to right grave social wrongs, or that any of the officers created by the people, and rightfully the

servants of the people, can set themselves up to be the masters of the people. Constitution-makers should make it clear beyond shadow of doubt that the people in their legislative capacity have the power to enact into law any measure they deem necessary for the betterment of social and industrial conditions. The wisdom of framing any particular law of this kind is a proper subject of debate; but the power of the people to enact the law should not be subject to debate. To hold the contrary view is to be false to the cause of the people, to the cause of American democracy. . . .

We stand for the rights of property, but we stand even more for the rights of man.

We will protect the rights of the wealthy man, but we maintain that he holds his wealth subject to the general right of the community to regulate its business use as the public welfare requires. . . .

Moreover, shape your constitutional action so that the people will be able through their legislative bodies, or, failing that, by direct popular vote, to provide Workmen's Compensation Acts to regulate the hours of labor for children and for women, to provide for their safety while at work, and to prevent overwork or work under unhygienic or unsafe conditions. See to it that no restrictions are placed upon legislative powers that will prevent the enactment of laws under which your people can promote the general welfare, the common good. Thus only will the 'general welfare' clause of our Constitution become a vital force for progress, instead of remaining a mere phrase. This also applies to the police powers of the Government. Make it perfectly clear that on every point of this kind it is your intention that the people shall decide for themselves how far the laws to achieve their purposes shall go, and that their decision shall be binding upon every citizen in the State, official or non-official, unless, of course, the Supreme Court of the nation in any given case decides otherwise. . . .

There remains the question of the recall of judges. . . . I do not believe in adopting the recall save as a last

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resort, when it has become clearly evident that no other course will achieve the desired result.

But either the recall will have to be adopted or else it will have to be made much easier than it now is to get rid, not merely of a bad judge, but of a judge who, however virtuous, has grown so out of touch with social needs and facts that he is unfit longer to render good service on the bench.

It is nonsense to say that impeachment meets the difficulty. In actual practice we have found that impeachment does not work, that unfit judges stay on the bench in spite of it, and indeed because of the fact that impeachment is the only remedy that can be used against them. Where such is the actual fact it is idle to discuss the theory of the case. Impeachment as a remedy for the ills of which the people justly complain is a complete failure. A quicker, a more summary, remedy is needed; some remedy at least as summary and as drastic as that embodied in the Massachusetts constitution. And whenever it be found in actual practice that such remedy does not give the needed results, I would unhesitatingly adopt the recall.

But there is one kind of recall in which I very earnestly believe, and the immediate adoption of which I urge.

There are sound reasons for being cautious about the recall of a good judge who has rendered an unwise and improper decision. Every public servant, no matter how valuable—and not omitting Washington or Lincoln or Marshall—at times makes mistakes. Therefore we should be cautious about recalling the judge, and we shall be cautious about interfering in any way with the judge in decisions which he makes in the ordinary course as between individuals. But when a judge decides a constitutional question, when he decides what the people as a whole can or cannot do, the people should have the right to recall that decision if they think it wrong. We should hold the judiciary in all respect; but it is both absurd and degrading to make a fetish of a judge or of any one else. . . .

Again and again in the past justice has been scan-

dalously obstructed by State courts declaring State laws in conflict with the Federal Constitution, although the Supreme Court of the nation had never so decided or had even decided in a contrary sense.

When the Supreme Court of the State declares a given statute unconstitutional, because in conflict with the State of the National Constitution, its opinion should be subject to revision by the people themselves. Such an opinion ought always to be treated with great respect by the people, and unquestionably in the majority of cases would be accepted and followed by them. But actual experience has shown the vital need of the people reserving to themselves the right to pass upon such opinion. If any considerable number of the people feel that the decision is in defiance of justice, they should be given the right by petition to bring before the voters at some subsequent election, special or otherwise, as might be decided, and after the fullest opportunity for deliberation and debate, the question whether or not the judges' interpretation of the Constitution is to be sustained. If it is sustained, well and good. If not, then the popular verdict is to be accepted as final, the decision is to be treated as reversed, and the construction of the Constitution definitely decided—subject only to action by the Supreme Court of the United States. . . .

## 65. THE LODGE COROLLARY, 1912

[In 1911 an American syndicate proposed to sell Magdalena Bay, in Lower California, which belonged to Mexico, to a Japanese fishing concern. Senator Lodge, when he heard of the proposal, introduced into the Senate a Resolution, passed on 2 August 1912, which stated that the United States would consider with 'grave concern' the occupation of any potential military or naval base on the American continents by a non-American Power. The Resolution, which was an extension of the Monroe Doctrine, was successful in preventing the sale.]

*Resolved*, That when any harbor or other place in the American continents is so situated that the occupation thereof for naval or military purposes might threaten the communications or the safety of the United States, the Government of the United States could not see without grave concern the actual or potential possession of such harbor or other place by any government, not American, as to give that government practical power of control for naval or military purposes.

## 66. THE SIXTEENTH AMENDMENT, 1913

[The decision of the Supreme Court in the case of *Pollock v. Farmers' Loan and Trust Company* (1895) (No. 46), that the income tax levied in the Wilson-Gorman Tariff Act was invalid, led to a demand for an amendment to the Constitution permitting a tax of this nature. The Sixteenth Amendment to this end was passed by Congress on 12 July 1909, and became law on ratification by three-quarters of the States on 25 February 1913.]

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

## 67. WILSON'S FIRST INAUGURAL ADDRESS, 1913

[The Presidential Election of 1912 was a great victory for the reformers. Taft and the Old Guard of the Republican Party only gained 8 electoral votes, Roosevelt for the Progressive Party gained 88, and Wilson 435. On popular votes, however, Wilson was in a minority. Further, for the first time since the Civil War, with the exception of the years 1893-1895, there was a Democratic President with Democratic majorities in both Houses of Congress.

In his Inaugural Address Wilson propounded the ideals of his policy, which was known as the 'New Freedom.' He declared his intention to reverse the policy of high tariffs, to reform the banking and industrial systems, to help agriculture, and to make use of Federal power to safeguard the health and well-being of the people.]

MY FELLOW CITIZENS:

There has been a change of government. It began two years ago, when the House of Representatives became Democratic by a decisive majority. It has now been completed. The Senate about to assemble will also be Democratic. The offices of President and Vice-President have been put into the hands of Democrats. What does the change mean? That is the question that is uppermost in our minds to-day. That is the question I am going to try to answer, in order, if I may, to interpret the occasion.

It means much more than the mere success of a party. The success of a party means little except when the nation is using that party for a large and definite purpose. No one can mistake the purpose for which the nation now seeks to use the Democratic Party. It seeks to use it to interpret a change in its own plans and point of view. Some old things with which we had grown familiar, and which had begun to creep into the very habit of our thought and of our lives, have altered their aspect as we have latterly looked critically upon them, with fresh, awakened eyes; have dropped their disguises and shown themselves alien and sinister. Some new things, as we look frankly upon them, willing to comprehend their real character, have come to assume the aspect of things long believed in and familiar, stuff of our own convictions. We have been refreshed by a new insight into our own life.

We see that in many things that life is very great. It is incomparably great in its material aspects, in its body of wealth, in the diversity and sweep of its energy, in the industries which have been conceived and built up by the genius of individual men and the limitless enterprise of groups of men. It is great, also, very great, in its moral force.

Nowhere else in the world have noble men and women exhibited in more striking forms the beauty and the energy of sympathy and helpfulness and counsel in their efforts to rectify wrong, alleviate suffering, and set the weak in the way of strength and hope. We have built up, moreover, a great system of government, which has stood through a long age as in many respects a model for those who seek to set liberty upon foundations that will endure against fortuitous change, against storm and accident. Our life contains every great thing, and contains it in rich abundance.

But the evil has come with the good, and much fine gold has been corroded. With riches has come inexcusable waste. We have squandered a great part of what we might have used, and have not stopped to conserve the exceeding bounty of nature, without which our genius for enterprise would have been worthless and impotent, scorning to be careful, shamefully prodigal as well as admirably efficient. We have been proud of our industrial achievements, but we have not hitherto stopped thoughtfully enough to count the human cost, the cost of lives snuffed out, of energies overtaxed and broken, the fearful physical and spiritual cost to the men and women and children upon whom the dead weight and burden of it all has fallen pitilessly the years through. The groans and agony of it all had not yet reached our ears, the solemn, moving undertone of our life, coming up out of the mines and factories and out of every home where the struggle had its intimate and familiar seat. With the great Government went many deep secret things which we too long delayed to look into and scrutinize with candid, fearless eyes. The great Government we loved has too often been made use of for private and selfish purposes, and those who used it had forgotten the people.

At last a vision has been vouchsafed us of our life as a whole. We see the bad with the good, the debased and decadent with the sound and vital. With this vision we approach new affairs. Our duty is to cleanse, to reconsider, to restore, to correct the evil without

impairing the good, to purify and humanize every process of our common life without weakening or sentimentalizing it. There has been something crude and heartless and unfeeling in our haste to succeed and be great. Our thought has been 'Let every man look out for himself, let every generation look out for itself,' while we reared giant machinery which made it impossible that any but those who stood at the levers of control should have a chance to look out for themselves. We had not forgotten our morals. We remembered well enough that we had set up a policy which was meant to serve the humblest as well as the most powerful, with an eye single to the standards of justice and fair play, and remembered it with pride. But we were very heedless and in a hurry to be great.

We have come now to the sober second thought. The scales of heedlessness have fallen from our eyes. We have made up our minds to square every process of our national life again with the standards we so proudly set up at the beginning and have always carried at our hearts. Our work is a work of restoration.

We have itemized with some degree of particularity the things that ought to be altered and here are some of the chief items: A tariff which cuts us off from our proper part in the commerce of the world, violates the just principles of taxation, and makes the Government a facile instrument in the hands of private interests; a banking and currency system based upon the necessity of the Government to sell its bonds fifty years ago and perfectly adapted to concentrating cash and restricting credits; an industrial system which, take it on all its sides, financial as well as administrative, holds capital in leading strings, restricts the liberties and limits the opportunities of labor, and exploits without renewing or conserving the natural resources of the country; a body of agricultural activities never yet given the efficiency of great business undertakings or served as it should be through the instrumentality of science taken directly to the farm, or afforded the facilities of credit best suited to its practical needs; water-courses un-

developed, waste places unreclaimed, forests untended, fast disappearing without plan or prospect of renewal, unregarded waste heaps at every mine. We have studied as perhaps no other nation has the most effective means of production, but we have not studied cost or economy as we should either as organizers of industry, as statesmen, or as individuals.

Nor have we studied and perfected the means by which government may be put at the service of humanity, in safeguarding the health of the nation, the health of its men and its women and its children, as well as their rights in the struggle for existence. This is no sentimental duty. The firm basis of government is justice, not pity. These are matters of justice. There can be no equality or opportunity, the first essential of justice in the body politic, if men and women and children be not shielded in their lives, their very vitality, from the consequences of great industrial and social processes which they cannot alter, control, or singly cope with. Society must see to it that it does not itself crush or weaken or damage its own constituent parts. The first duty of law is to keep sound the society it serves. Sanitary laws, pure food laws, and laws determining conditions of labor which individuals are powerless to determine for themselves are intimate parts of the very business of justice and legal efficiency.

These are some of the things we ought to do, and not leave the others undone, the old-fashioned, never-to-be-neglected, fundamental safeguarding of property and of individual right. This is the high enterprise of the new day: To lift everything that concerns our life as a nation to the light that shines from the hearthfire of every man's conscience and vision of the right. It is inconceivable that we should do this as partisans; it is inconceivable we should do it in ignorance of the facts as they are or in blind haste. We shall restore, not destroy. We shall deal with our economic system as it is and as it may be modified, not as it might be if we had a clean sheet of paper to write upon; and step by step we shall make it what it should be, in the spirit of

those who question their own wisdom and seek counsel and knowledge, not shallow self-satisfaction or the excitement of excursions whither they cannot tell. Justice, and only justice, shall always be our motto.

And yet it will be no cool process of mere science. The nation has been deeply stirred, stirred by a solemn passion, stirred by the knowledge of wrong, of ideals lost, of government too often debauched and made an instrument of evil. The feelings with which we face this new age of right and opportunity sweep across our heartstrings like some air out of God's own presence, where justice and mercy are reconciled and the judge and the brother are one. We know our task to be no mere task of politics but a task which shall search us through and through, whether we be able to understand our time and the need of our people, whether we be indeed their spokesmen and interpreters, whether we have the pure heart to comprehend and the rectified will to choose our high course of action.

This is not a day of triumph; it is a day of dedication. Here muster, not the forces of party, but the forces of humanity. Men's hearts wait upon us; men's lives hang in the balance; men's hopes call upon us to say what we will do. Who shall live up to the great trust? Who dare fail to try? I summon all honest men, all patriotic, all forward-looking men, to my side. God helping me, I will not fail them, if they will but counsel and sustain me!

## 68. THE SEVENTEENTH AMENDMENT, 1913

[Under the Federal Constitution, Senators were chosen by the legislatures of the States they represented. This plan was part of the 'Great Compromise,' by which each State had equal representation in the Senate. The effect, undoubtedly, was to accentuate the conservative nature of that

body. President Johnson in 1868 proposed to Congress an amendment allowing the popular election of Senators; it was supported by the various popular parties which grew up after the period of Reconstruction, and the demand was given strength by a number of instances which showed the possibility of bribing State Legislatures to secure the election of particular individuals to the Senate. Resolutions in favour of an amendment were repeatedly introduced into Congress and after 1893 often passed the House of Representatives, but were always defeated in the Senate. The struggle was transferred to the States and, one after another, State Legislatures passed resolutions demanding that Congress should summon a constitutional convention to carry the amendment. They also enacted 'primary laws' which ordered the nomination of Senators for election by popular vote. This meant that the reform was already carried in practice. In 1912 Congress passed an amendment with the necessary majority, and on 31 May 1913 it was ratified by the States and became law.]

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

## 69. WILSON'S MOBILE ADDRESS, 1913

[When Wilson became President, American marines were in control of Cuba and Nicaragua, and the Roosevelt Corollary to the Monroe Doctrine was fully accepted in the United States. In an address to the Southern Commercial Congress at Mobile, Alabama, Wilson announced the reversal of this policy. It cannot be said that his actions fulfilled the promises of this speech. American marines remained in control of Nicaragua until 1933, with a short interval in 1925. They landed in Haiti in 1915, in San Domingo in 1916, and in Cuba in 1917. An outbreak in Mexico led to the occupation of Vera Cruz in April 1914. But the Mobile Address heralded a change in the attitude towards the Latin-American countries, as Wilson's patience towards Mexico showed. It was left to President Franklin Roosevelt to consummate this new policy.]

. . . The future, ladies and gentlemen, is going to be very different for this hemisphere from the past. These States lying to the south of us, which have always been our neighbors, will now be drawn closer to us by innumerable ties, and, I hope, chief of all, by the tie of a common understanding of each other. Interest does not tie nations together; it sometimes separates them. But sympathy and understanding does unite them, and I believe that by the new route that is just about to be opened, while we physically cut two continents asunder, we spiritually unite them. It is a spiritual union which we seek.

Do you not see now what is about to happen? These great tides which have been running along parallels of latitude will now swing southward athwart parallels of latitude, and that opening gate at the Isthmus of Panama will open the world to a commerce that she has not known before, a commerce of intelligence, of thought and sympathy between North and South. The Latin-American States, which, to their disadvantage,

have been off the main lines, will now be on the main lines. I feel that these gentlemen honoring us with their presence to-day will presently find that some part, at any rate, of the center of gravity of the world has shifted. Do you realize that New York, for example, will be nearer the western coast of South America than she is now to the eastern coast of South America? Do you realize that a line drawn northward parallel with the greater part of the western coast of South America will run only about one hundred and fifty miles west of New York? The great bulk of South America, if you will look at your globes (not at your Mercator's projection), lies eastward of the continent of North America. You will realize that when you realize that the canal will run southeast, not southwest, and that when you get into the Pacific you will be farther east than you were when you left the Gulf of Mexico. These things are significant, therefore, of this, that we are closing one chapter in the history of the world and are opening another, of great, unimaginable significance.

There is one peculiarity about the history of the Latin-American States which I am sure they are keenly aware of. You hear of 'concessions' to foreign capitalists in Latin America. You do not hear of concessions to foreign capitalists in the United States. They are not granted concessions. They are invited to make investments. The work is ours, though they are welcome to invest in it. We do not ask them to supply the capital and do the work. It is an invitation, not a privilege; and States that are obliged, because their territory does not lie within the main field of modern enterprise and action, to grant concessions are in this condition, that foreign interests are apt to dominate their domestic affairs, a condition of affairs always dangerous and apt to become intolerable. What these States are going to see, therefore, is an emancipation from the subordination, which has been inevitable, to foreign enterprise and an assertion of the splendid character which, in spite of these difficulties, they have again and again been able to demonstrate. The

dignity, the courage, the self-possession, the self-respect of the Latin-American States, their achievements in the face of all these adverse circumstances, deserve nothing but the admiration and applause of the world. They have had harder bargains driven with them in the matter of loans than any other peoples in the world. Interest has been exacted of them that was not exacted of anybody else, because the risk was said to be greater; and then securities were taken that destroyed the risk —an admirable arrangement for those who were forcing the terms! I rejoice in nothing so much as in the prospect that they will now be emancipated from these conditions, and we ought to be the first to take part in assisting in that emancipation. I think some of these gentlemen have already had occasion to bear witness that the Department of State in recent months has tried to serve them in that wise. In the future they will draw closer and closer to us because of circumstances of which I wish to speak with moderation and, I hope, without indiscretion.

We must prove ourselves their friends and champions upon terms of equality and honor. You cannot be friends upon any other terms than upon the terms of equality. You cannot be friends at all except upon the terms of honor. We must show ourselves friends by comprehending their interest whether it squares with our own interest or not. It is a very perilous thing to determine the foreign policy of a nation in the terms of material interest. It not only is unfair to those with whom you are dealing, but it is degrading as regards your own actions.

Comprehension must be the soil in which shall grow all the fruits of friendship, and there is a reason and a compulsion lying behind all this which is dearer than anything else to the thoughtful men of America. I mean the development of constitutional liberty in the world. Human rights, national integrity, and opportunity as against material interests—that, ladies and gentlemen, is the issue which we now have to face. I want to take this occasion to say that the United States

will never again seek one additional foot of territory by conquest. She will devote herself to showing that she knows how to make honorable and fruitful use of the territory she has, and she must regard it as one of the duties of friendship to see that from no quarter are material interests made superior to human liberty and national opportunity. I say this, not with a single thought that anyone will gainsay it, but merely to fix in our consciousness what our real relationship with the rest of America is. It is the relationship of a family of mankind devoted to the development of true constitutional liberty. We know that that is the soil out of which the best enterprise springs. We know that this is a cause which we are making in common with our neighbors, because we have had to make it for ourselves.

Reference has been made here to-day to some of the national problems which confront us as a nation. What is at the heart of all our national problems? It is that we have seen the hand of material interest sometimes about to close upon our dearest rights and possessions. We have seen material interests threaten constitutional freedom in the United States. Therefore we will now know how to sympathize with those in the rest of America who have to contend with such powers, not only within their borders but from outside their borders also. . . .

In emphasizing the points which must unite us in sympathy and in spiritual interest with the Latin-American peoples, we are only emphasizing the points of our own life, and we should prove ourselves untrue to our own traditions if we proved ourselves untrue friends to them. . . .

## APPENDIX

### CLÂUSES IN THE CONSTITUTION OF THE UNITED STATES AND AMENDMENTS REFERRED TO IN THE DOCUMENTS

#### ARTICLE I

##### SECTION 3

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two-thirds of the Members present.

#### ARTICLE I

##### SECTION 8

###### *(The General Welfare Clause)*

The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.

#### ARTICLE I

##### SECTION 8

###### *(The Commerce Clause)*

The Congress shall have Power . . . to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

**ARTICLE I****SECTION 8**

The Congress shall have Power . . . to provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions.

**ARTICLE I****SECTION 9**

No Capitation, or other direct, tax shall be laid unless in Proportion to the Census or Enumeration herein before directed to be taken. . . .

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

**ARTICLE II****SECTION 4**

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

**ARTICLE IV****SECTION 2**

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

**ARTICLE IV****SECTION 4**

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive

(when the Legislature cannot be convened) against domestic Violence.

**AMENDMENT IV**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**AMENDMENT V**

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**AMENDMENT VI**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

**AMENDMENT X**

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.



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